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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION – SANTA ANA**

IN RE FONTEM US, INC.
CONSUMER CLASS ACTION
LITIGATION

Case No.: 8:15-cv-01026-JVS-RAO

Class Action

**SECOND CONSOLIDATED
AMENDED COMPLAINT FOR
VIOLATIONS OF: (1) CAL.
CONSUMERS LEGAL
REMEDIES ACT; (2) CAL.
UNFAIR COMPETITION LAW;
(3) CAL. DECEPTIVE, FALSE
AND MISLEADING
ADVERTISING; (4) N.Y. GEN.
BUS. LAW; (5) FRAUDULENT
CONCEALMENT UNDER
ILLINOIS LAW; AND (6) IL.
CONSUMER FRAUD AND
DECEPTIVE BUSINESS
PRACTICES ACT**

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1 Plaintiffs Larry Diek, Frank Perez and Michael Whitney (the “California
 2 Plaintiffs”), Paul Pisciotto (the “New York Plaintiff”), and Tanya Mullins (the
 3 “Illinois Plaintiff”) (collectively referred to herein as “Plaintiffs”), by and through
 4 their undersigned attorneys, file this Second Consolidated Amended Complaint
 5 (“SCAC”), joining two actions, one originally filed in Orange County Superior
 6 Court (the “*Diek* Action”), and one filed in the Northern District of California (the
 7 “*Whitney* Action”). Together Plaintiffs bring this action on behalf of themselves
 8 and all others similarly situated, based upon personal knowledge as to themselves
 9 and their activities, and on information and belief as to all other matters, against
 10 Defendants LOEC, Inc., Lorillard, Inc., Reynolds American, Inc. ITG Brands, LLC,
 11 Fontem US, Inc., and Fontem Holdings 4 B.V. (collectively “Defendants”),¹ and
 12 allege as follows:

13 **I. NATURE OF THE ACTION**

14 1. Defendants, the manufacturers, sellers, and distributors of the BLU
 15 brand of electronic cigarettes (collectively, “BLU E-Cigarettes” or “BLUs”), have a
 16 uniform and long-standing pattern of employing unfair and deceptive practices with
 17 respect to the sale of their products through material omissions and partial
 18 misrepresentations concerning the potential health risks thereof.

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 23 ¹ LOEC, Inc. was previously responsible for the development, manufacture,
 24 marketing and sale of Blu electronic cigarettes. In or about April 2012, Lorillard,
 25 Inc. acquired LOEC, Inc. In or about June 2015, Reynolds American, Inc.
 26 completed its acquisition of Lorillard, Inc. and in the related divestiture transactions,
 27 Blu was sold to ITG Brands, LLC (a subsidiary of Imperial Tobacco Group, PLC).
 28 LOEC, Inc. is still in existence, however, its assets and operations were transferred
 to Fontem US, Inc. Lorillard, Inc. is also still in existence, however, its assets and
 operations were transferred to Fontem Holdings 4 B.V.

2. Throughout the class period,² Defendants actively concealed and failed to disclose to consumers that the aerosol produced by BLU E-Cigarettes contains dangerous carcinogens including, but not limited to, formaldehyde and also actively concealed and failed to disclose serious and dangerous respiratory issues that may be caused by smoking BLU E-Cigarettes. In fact, packages in which BLU E-Cigarettes have been sold during the Class Period omitted information about certain material health risks associated with the use of BLU E-Cigarettes and their ingredients, despite stating other potential dangers of the products regarding nicotine

3. Defendants' material omissions and partial misrepresentations on their packages are deceptive, false and misleading.

4. Studies have shown that electronic cigarettes, including BLU E-Cigarettes, contain disease-causing substances that are dangerous to human health. As early as 2009, the United States Food and Drug Administration ("FDA") concluded that two leading brands of e-cigarettes contained detectable levels of known carcinogens and toxic chemicals including tobacco-specific nitrosamines. More recently, as expressly determined by the California Department of Public Health, the vapor in e-cigarettes like BLU E-Cigarettes is an aerosol that contains carcinogens and toxins that pose harm to the user and to people exposed to these carcinogenic materials second-hand:

² As set forth in ¶¶ 112, 128, and 146, the class period for the California Class is from April 22, 2011 until the date of notice. As set forth in ¶ 180, the class period for the New York Class is October 2, 2012 until the date of notice. As set forth in ¶¶ 192 and 202, the class period for the Illinois Class based on the fraudulent concealment claim is October 2, 2010 until the date of notice, and the class period for the Illinois Class based on the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.* ("ICFA") is October 2, 2012 until the date of notice. Unless stated otherwise, the four class periods are collectively referenced as the "Class Period."

1 5. Studies also show that certain electronic cigarettes, including BLU E-
2 Cigarettes, require users to take deeper puffs to produce vapor than the puffs
3 required for a traditional tobacco cigarette, and that this could be harmful to the
4 users' health.

5 6. Furthermore, there is widespread agreement in the scientific
6 community that further research is necessary before the full negative effects of
7 electronic cigarette use on users' health can be known and that until then,
8 manufacturers, sellers, and distributors of electronic cigarettes should not make any
9 representation relating to the safety, health, or benefits, if any, of e-cigarettes.
10 Therefore, Defendants' failure to disclose all of the known dangerous carcinogens
11 and toxins emitted by BLU E-Cigarettes, and harmful health effects of taking deeper
12 puffs to produce vapor is deceptive, false and misleading.

13 7. Defendants' warning label is misleading and deceptive because while it
14 identifies nicotine as a chemical component, it does not provide a full list of other
15 carcinogenic ingredients and other disease-causing substances, including those noted
16 by the California Department of Public Health, or the risks other than nicotine of
17 inhaling BLU E-Cigarettes as shown by studies described herein below. For
18 example, when heated, the aerosol produced by BLU E-Cigarettes and inhaled by
19 BLU users contains formaldehyde, a chemical known to the State of California and
20 other entities to cause cancer. Nevertheless, and despite California's statutory
21 requirement that sellers of consumer products causing exposure to known
22 carcinogens provide clear and reasonable warnings regarding such hazards,
23 Defendants utterly fail to warn consumers and users of BLU E-Cigarettes that use of
24 such products will expose them to a chemical known to cause cancer. Defendants'
25 listing of the ingredients on the package but failure to disclose to users the hidden
26 ingredients of carcinogens and toxins caused by the heating of certain such
27 ingredients was also a material omission and false partial misrepresentation. This
28

1 failure to disclose was an intentional act designed to hide the potential dangers of
2 the use of BLU E-Cigarettes from consumers.

3 8. Defendants actively concealed and failed to disclose what they knew
4 about the contents of their own products, including that BLU E-Cigarettes contain
5 carcinogens, toxins, and other impurities (including some of those also found in
6 tobacco cigarettes) in order to deceive the consuming public to buy their product.
7 Defendants knew that had they been truthful and fully informed the consuming
8 public that their products emitted known carcinogens, such as formaldehyde,
9 consumers would not have purchased their products or would have paid less than the
10 retail price.

11 9. As a result of Defendants' material omissions and partial
12 misrepresentations on their packages, consumers – including Plaintiffs and the other
13 members of the proposed Classes – purchased BLU E-Cigarettes without being
14 advised that they contain a variety of toxins, impurities, and related potential health
15 hazards as found by various studies, and do not have the particular standard or
16 quality as represented in their packaging. Had Defendants disclosed these material
17 facts, Plaintiffs would not have purchase, or would have paid less for, Defendants'
18 BLU E-Cigarettes. Defendants were able to charge more than what their BLU E-
19 Cigarettes would have been worth had they disclosed the truth about them.

20 10. Plaintiffs bring this lawsuit against Defendants, on behalf of themselves
21 and the proposed Classes, in order to: (a) require Defendants to disclose the risks
22 associated with inhaling BLU E-Cigarettes as discussed herein below, in order to
23 ensure that consumers are fully informed when they make their purchasing decision;
24 and (b) secure redress for consumers who purchased one or more BLU E-Cigarettes
25 through Defendants' material omissions and partial misrepresentations. Plaintiffs,
26 on behalf of themselves and the proposed Classes, allege violations of the California
27 Consumers Legal Remedies Act, Civil Code § 1750, *et seq.* ("CLRA"), California's
28 Unfair Competition Law, Business & Professions Code § 17200, *et seq.* ("UCL"),

1 California’s False Advertising Law, Business & Professions Code § 17500, *et seq.*
 2 (“FAL”), New York General Business Law § 349 (“GBL”), and fraudulent
 3 concealment under Illinois law, and ICFA.

4 **II. JURISDICTION AND VENUE**

5 11. This is a consolidated action against Defendants for violations of: (1)
 6 California’s CLRA, Civil Code § 1750, *et seq.*; (2) California’s UCL, Business &
 7 Professions Code § 17200, *et seq.*; (3) California’s FAL, Business & Professions
 8 Code § 17500, *et seq.*; (4) New York GBL § 349; (5) fraudulent concealment under
 9 Illinois law; and (6) Illinois ICFA, 815 ILCS 505/1.

10 12. On June 26, 2015, Defendants removed the *Diek* Action to federal court
 11 which was eventually assigned to this Court. Dkt. No. 1 (Notice of Removal of
 12 Action (the “Notice”). According to the Notice, the *Diek* Action is within the
 13 original jurisdiction of this Court under the Class Action Fairness Act of 2005
 14 (“CAFA”), 28 U.S.C. § 1332(d), which grants district courts original jurisdiction
 15 over class actions in which the amount in controversy exceeds \$5,000,000 and any
 16 member of the class of plaintiffs is a citizen of a State different from any defendant.
 17 *Id.* at ¶ 12. The Notice states that the *Diek* Action satisfies each of the requirements
 18 of Section 1332(d)(2) for original jurisdiction under CAFA for the following
 19 reasons: (1) the *Diek* action purportedly meets the CAFA definition of a class action,
 20 which is “any civil action filed under rule 23 of the Federal Rules of Civil Procedure
 21 or similar statute or rule of judicial procedure”; (2) the aggregate number of class
 22 members is greater than 100 persons; (3) there is diversity between Plaintiffs and
 23 Defendants; and (4) Defendants have sold in excess of \$5,000,000 of e-cigarettes
 24 within California alone during the last four years. *Id.* at ¶¶ 13-16. Accordingly, this
 25 Court has jurisdiction of the *Diek* Action pursuant to 28 U.S.C. § 1332(d) based on
 26 the Notice.

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1 13. On September 1, 2015, Plaintiff Whitney filed a complaint in the
2 Northern District of California. On that same date, Plaintiff Whitney served a 60-
3 day notice of intent to sue under California's Proposition 65, Cal. Health and Safety
4 Code §§ 25249.5, *et seq.* Following expiration of the notice period, Plaintiff
5 Whitney filed a First Amended Complaint on November 13, 2015. Given the
6 potential overlap between issues in the *Whitney* and *Diek* Actions, Plaintiff Whitney
7 agreed to transfer his complaint to the Central District of California in order to
8 consolidate his case with the *Diek* Action. The *Whitney* Action was transferred on
9 November 25, 2015 and the request to consolidate the *Whitney* and *Diek* Actions
10 was granted on December 8, 2015.

11 14. This Court has personal jurisdiction over Defendants because
12 Defendants have purposefully availed themselves of the privilege of conducting
13 business in the State of California by advertising and selling their brand of
14 electronic cigarettes to retailers and consumers in California. Defendants and their
15 agents have prepared, disseminated, or made available print advertisements, Internet
16 advertisements and related materials through their website,³ all of which are at issue
17 here, in California.

18 15. Jurisdiction over the New York and Illinois Plaintiffs is proper pursuant
19 to 28 U.S.C. § 1367, which provides, in relevant part, that: (a) "in any action of
20 which the district courts have original jurisdiction, the district courts shall have
21 supplemental jurisdiction over all other claims that are so related to claims in the
22 action within such original jurisdiction that they form part of the same case or
23 controversy under Article III of the United States Constitution ... includ[ing] claims
24 that involve the joinder ... of additional parties."

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³ BLU's website is located and can be viewed at <http://blucigs.com/>.

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because many of the acts and transactions giving rise to this action occurred in this District and because Defendants:

- a. Have intentionally availed themselves of the laws and markets within this District through the promotion, marketing, distribution and sale of their products in this District;
- b. do substantial business in this District; and
- c. are subject to personal jurisdiction in this District;

and because some of the California Plaintiffs:

- a. were exposed to Defendants' material omissions and fraudulent partial misrepresentations in this District; and
- b. purchased BLU E-Cigarettes in this District.

III. PARTIES

A. Plaintiffs

Plaintiff Diek

17. Plaintiff Diek is an individual who resides in Orange County, California and is a citizen of California. During the relevant period, Plaintiff Diek, while in the State of California, was fraudulently misled and deceived by Defendants in two ways: first, Defendants actively concealed material facts from Plaintiff Diek, depriving him of an opportunity to make a fully informed decision on whether to purchase BLU E-Cigarettes; and second, Defendants made fraudulent partial misrepresentations on the packaging in which they sold BLU E-Cigarettes to Plaintiffs and members of the Classes. As a result of Defendants' active concealment of material facts and fraudulent partial misrepresentations contained on the packaging, Plaintiff Diek purchased BLU E-Cigarettes while in the State of California. Had Defendants disclosed that BLUs contain a variety of toxins, impurities, carcinogens (such as formaldehyde) and other potential health hazards which were or should have been known to Defendants as confirmed by various studies discussed in more detail below, including studies performed on Defendants'

1 BLU E-Cigarettes, Plaintiff Diek would not have purchased, or would have paid less
2 for, Defendants' BLUs.

3 18. In addition, Plaintiff Diek saw Defendants' fraudulent partial
4 misrepresentations contained on the BLU packages before he purchased them in
5 California. Plaintiff Diek, relying on the warning on the packages and the
6 ingredient list, purchased BLU E-Cigarettes believing that the only material health
7 risks associated with using them were those that were disclosed on the package
8 relating to nicotine. Plaintiff Diek would not have purchased, or would have paid
9 less for, BLU E-Cigarettes had he known that studies have found, including studies
10 performed on BLU E-Cigarettes, that they contain detectable levels of known
11 carcinogens, toxic chemicals and other contaminants and impurities that are, or
12 potentially are, disease-causing. Plaintiff Diek would not have purchased, or would
13 have paid less for, BLU E-Cigarettes had he known that they may have potentially
14 harmful respiratory and other side effects other than those related to nicotine, and
15 that the full range and long-term health effects of BLUs are not yet known, as
16 confirmed in the studies referenced in this SCAC. Thus, as a result of Defendants'
17 active concealment and omission of material facts and fraudulent partial
18 misrepresentations, Plaintiff Diek suffered injury in fact and lost money when he
19 purchased Defendants' BLU E-Cigarettes. Prior to the filing of this SCAC, from
20 approximately mid to late 2014, Plaintiff Diek regularly purchased BLU E-
21 Cigarettes from gas stations in Orange County and A-1 Smoke & Cigar Shop,
22 located at 22359 El Toro Road, Lake Forest, California 92630. Plaintiff Diek paid
23 the retail market price for BLUs, which ranged between \$10 and \$12.

24 **Plaintiff Perez**

25 19. Plaintiff Perez is an individual who resides in Merced, California and is
26 a citizen and resident of the State of California. During the relevant period, Plaintiff
27 Perez, while in the State of California, was fraudulently misled and deceived by
28 Defendants in two ways: first, Defendants actively concealed material facts from
Plaintiff Perez, depriving him of an opportunity to make a fully informed decision

1 on whether to purchase BLU E-Cigarettes; and second, Defendants made fraudulent
2 partial misrepresentations on the packaging in which they sold BLU E-Cigarettes to
3 Plaintiffs and members of the Classes. As a result of Defendants' active
4 concealment of material facts and fraudulent partial misrepresentations contained on
5 the packaging, Plaintiff Perez purchased BLU E-Cigarettes while in the State of
6 California. Had Defendants disclosed that BLUs contain a variety of toxins,
7 impurities, carcinogens (such as formaldehyde) and other potential health hazards
8 which were or should have been known to Defendants as confirmed by various
9 studies discussed in more detail below, including studies performed on Defendants'
10 BLU E-Cigarettes, Plaintiff Perez would not have purchased, or would have paid
11 less for, Defendants' BLUs.

12 20. In addition, Plaintiff Perez saw Defendants' fraudulent partial
13 misrepresentations contained on the BLU packages before he purchased them in
14 California. Plaintiff Perez, relying on the warning on the packages and the
15 ingredient list, purchased BLU E-Cigarettes believing that the only material health
16 risks associated with using them were those that were disclosed on the package
17 relating to nicotine. Plaintiff Perez would not have purchased, or would have paid
18 less for, BLU E-Cigarettes had he known that studies have found, including studies
19 performed on BLU E-Cigarettes, that they contain detectable levels of known
20 carcinogens, toxic chemicals and other contaminants and impurities that are, or
21 potentially are, disease-causing. Plaintiff Perez would not have purchased, or would
22 have paid less for, BLU E-Cigarettes had he known that they may have potentially
23 harmful respiratory and other side effects other than those related to nicotine, and
24 that the full range and long-term health effects of BLUs are not yet known, as
25 confirmed in the studies referenced in this SCAC. Thus, as a result of Defendants'
26 active concealment and omission of material facts and fraudulent partial
27 misrepresentations, Plaintiff Perez suffered injury in fact and lost money when he
28 purchased Defendants' BLU E-Cigarettes. Prior to the filing of this SCAC, in

1 approximately November 2012, Plaintiff Perez purchased BLU E-Cigarettes from
2 Walmart located at 3055 Loughborough Drive, Merced, California 95348. Plaintiff
3 Perez purchased a kit and cartridges, and paid the retail market price for BLUs.

4 **Plaintiff Whitney**

5 21. Plaintiff Whitney is an individual consumer who, at all times material
6 hereto, was a citizen of San Diego County, California. During the relevant period,
7 Plaintiff Whitney, while in the State of California, was fraudulently misled and
8 deceived by Defendants in two ways: first, Defendants actively concealed material
9 facts from Plaintiff Whitney, depriving him of an opportunity to make a fully
10 informed decision on whether to purchase BLU E-Cigarettes; and second,
11 Defendants made fraudulent partial misrepresentations on the packaging in which
12 they sold BLU E-Cigarettes to Plaintiffs and members of the Classes. As a result
13 of Defendants' active concealment and omission of material facts and fraudulent
14 partial misrepresentations contained on the packaging, Plaintiff Whitney purchased
15 BLU E-Cigarettes at various locations in Oceanside, California and San Diego
16 County throughout the Class Period, as defined below. More specifically, in early
17 2015, Whitney purchased the Blu Starter Pack in the cherry flavor numerous times
18 at Mike's Liquor in Oceanside, California. The packaging for the BLU E-Cigarettes
19 he purchased did not disclose that the user would be or could be exposed to
20 formaldehyde, other chemicals known to the State of California and other entities to
21 cause cancer, or other potential toxins, carcinogens, impurities or health hazards.

22 22. Plaintiff Whitney relied on Defendants' deceptive material omissions
23 and fraudulent partial misrepresentations concerning the nature of the BLU E-
24 Cigarettes. Plaintiff Whitney would not have purchased, or would have paid less
25 for, the BLU E-Cigarettes had he known the material facts omitted by Defendants:
26 that BLU E-Cigarettes will expose users to the carcinogenic toxin formaldehyde. If
27 Defendants were to manufacture BLUs in a manner that BLU E-Cigarettes did not
28 expose users to harmful chemicals such that Plaintiff Whitney knew that labels on

1 Defendants' BLU E-Cigarettes were truthful and not misleading, he would consider
2 purchasing the BLU E-Cigarettes in the future. At present, however, Plaintiff
3 Whitney cannot be confident that the labeling of the BLU E-Cigarettes is, and will
4 be, truthful and non-misleading. Plaintiff Whitney is very concerned regarding the
5 adverse health effects of using the BLU E-Cigarettes and is thus interested in
6 learning all of the facts known to Defendants regarding the toxic exposures resulting
7 from their use.

8 **Plaintiff Pisciotto**

9 23. Plaintiff Pisciotto is an individual who resides in Suffolk County, New
10 York and is a resident and citizen of the State of New York. During the relevant
11 period, Plaintiff Pisciotto, while in the State of New York, was fraudulently misled
12 and deceived by Defendants in two ways: first, Defendants actively concealed
13 material facts from Plaintiff Pisciotto, depriving him of an opportunity to make a
14 fully informed decision on whether to purchase BLU E-Cigarettes; and second,
15 Defendants made fraudulent partial misrepresentations on the packaging in which
16 they sold BLU E-Cigarettes to Plaintiffs and members of the Classes. As a result of
17 Defendants' active concealment and omission of material facts and fraudulent
18 partial misrepresentations contained in the packaging, Plaintiff Pisciotto purchased
19 BLU E-Cigarettes while in the State of New York. Had Defendants disclosed that
20 BLUs contain a variety of toxins, impurities, carcinogens (such as formaldehyde)
21 and other potential health hazards which were or should have been known to
22 Defendants as confirmed by various studies discussed in more detail below,
23 including studies performed on Defendants' BLU E-Cigarettes, Plaintiff Pisciotto
24 would not have purchased, or would have paid less for, Defendants' BLUs.

25 24. In addition, Plaintiff Pisciotto saw Defendants' fraudulent partial
26 misrepresentations contained on the BLU packages before he purchased them in
27 New York. Plaintiff Pisciotto, relying on the warning on the packages and the
28 ingredient list, purchased BLU E-Cigarettes believing that the only material health

1 risks associated with using them were those that were disclosed on the package
2 relating to nicotine. Plaintiff Pisciotto would not have purchased, or would have
3 paid less for, BLU E-Cigarettes had he known that studies have found, including
4 studies performed on BLU E-Cigarettes, that they contain detectable levels of
5 known carcinogens, toxic chemicals and other contaminants and impurities that are,
6 or potentially are, disease-causing. Plaintiff Pisciotto would not have purchased, or
7 would have paid less for, BLU E-Cigarettes had he known that they may have
8 potentially harmful respiratory and other side effects other than those related to
9 nicotine, and that the full range and long-term health effects of BLUs are not yet
10 known, as confirmed in the studies referenced in this SCAC. Thus, as a result of
11 Defendants' active concealment and omission of material facts and fraudulent
12 partial misrepresentations, Plaintiff Pisciotto suffered injury in fact and lost money
13 when he purchased Defendants' BLU E-Cigarettes. Prior to the filing of this SCAC,
14 Plaintiff Pisciotto purchased BLU E-Cigarettes from a 7-11 store, located at 1733
15 Old Country Road in Riverhead, New York, 11901. Plaintiff Pisciotto first
16 purchased a disposable BLU E-Cigarette between approximately mid-July and mid-
17 August of 2013, and believes he purchased approximately one dozen additional
18 disposable BLU E-Cigarettes thereafter. Plaintiff Pisciotto purchased BLUs in the
19 tobacco flavor, and paid the retail market price for BLUs, which he believes to be
20 approximately \$10.

21 **Plaintiff Mullins**

22 25. Plaintiff Mullins is an individual who resides in Cook County, Illinois
23 and is a resident and citizen of Illinois. During the relevant period, Plaintiff
24 Mullins, while in the State of Illinois, was misled and deceived by Defendants'
25 active concealment of material facts, which if disclosed, would have influenced her
26 decision to buy Defendants' BLU E-Cigarettes. As a result of Defendants'
27 intentional and active concealment of material facts, Plaintiff Mullins purchased
28 BLU E-Cigarettes while in the State of Illinois. Had Defendants disclosed that

1 BLUs contain a variety of toxins, impurities, carcinogens (such as formaldehyde)
2 and other potential health hazards which were or should have been known to
3 Defendants as confirmed by various studies discussed in more detail below,
4 including studies performed on Defendants' BLU E-Cigarettes, Plaintiff Mullins
5 would not have purchased, or would have paid less for, Defendants' BLUs.

6 26. In addition, Plaintiff Mullins saw Defendants' fraudulent partial
7 misrepresentations contained on the BLU packages before she purchased them in
8 Illinois. Plaintiff Mullins, relying on the warning on the packages and the ingredient
9 list, purchased BLU E-Cigarettes believing that the only material health risks
10 associated with using them were those that were disclosed on the package relating to
11 nicotine. Plaintiff Mullins would not have purchased, or would have paid less for,
12 BLU E-Cigarettes had she known that studies have found, including studies
13 performed on BLU E-Cigarettes, that they contain detectable levels of known
14 carcinogens, toxic chemicals and other contaminants and impurities that are, or
15 potentially are, disease-causing. Plaintiff Mullins would not have purchased, or
16 would have paid less for, BLU E-Cigarettes had she known that they may have
17 potentially harmful respiratory and other side effects other than those related to
18 nicotine, and that the full range and long-term health effects of BLUs are not yet
19 known, as confirmed in the studies referenced in this SCAC. Thus, as a result of
20 Defendants' intentional and active concealment of these material facts and
21 fraudulent partial misrepresentations, Plaintiff Mullins suffered injury in fact and
22 lost money when she purchased Defendants' BLU E-Cigarettes. Prior to the filing
23 of this SCAC, from approximately March 2013 through approximately August
24 2013, Plaintiff Mullins regularly purchased BLU E-Cigarettes from convenience
25 stores and gas stations in and around the Chicago area, including the Mobil gas
26 station in River Grove, IL. She purchased multiple rechargeable kits with USB
27 ports, and refills for the kits, as well as several single pack disposables. Plaintiff
28 Mullins paid the retail market price for BLUs. On information and belief, she paid

1 approximately \$14.99 for the kits, under \$14.99 for the refills, and approximately
2 \$9.99 for the disposables.

3 **B. Defendants**

4 27. LOEC, Inc. is a corporation with its corporate headquarters located at
5 9101 Southern Pine Boulevard, Charlotte, NC 28273.

6 28. Lorillard, Inc. is a corporation with its corporate headquarters located at
7 300 North Greene Street, Suite 1601, Greensboro, NC 27401.

8 29. Reynolds American, Inc. is a corporation with its corporate
9 headquarters located at 401 North Main Street, Winston-Salem, NC 27101-3804

10 30. ITG Brands, LLC is a limited liability company with its corporate
11 headquarters located at 5900 North Andrews Avenue, Suite 1100, Fort Lauderdale,
12 FL 33309.

13 31. Fontem US, Inc. is a corporation with its corporate headquarters
14 located at 5900 N. Andrews Avenue, Suite 1100, Fort Lauderdale, FL 33309.

15 32. Fontem Holdings 4 B.V. is a business venture based in the Netherlands.

16 33. Plaintiffs allege, on information and belief, that at all times herein,
17 Defendants' agents, employees, representatives, executives, directors, partners,
18 and/or subsidiaries were acting within the course and scope of such agency,
19 employment, and representation, on behalf of Defendants.

20 34. DOES 1 to 10, inclusive are now, and/or at all times mentioned in this
21 Complaint were licensed to do business and/or actually doing business in the State
22 of California. Plaintiffs do not know the true names or capacities, whether
23 individual, partner or corporate, of DOES 1 to 10, inclusive and for that reason,
24 DOES 1 to 10 are sued under such fictitious names. Plaintiffs will seek leave of
25 court to amend this Complaint to allege such names and capacities as soon as they are
26 ascertained.

27 35. Defendants, and each of them, are now, and/or at all times mentioned in
28 this SCAC were in some manner legally responsible for the events, happenings and

1 circumstances alleged in this SCAC. Defendants proximately caused Plaintiffs, all
2 others similarly situated and the general public to be subjected to the unlawful
3 practices, wrongs, complaints, injuries, and/or damages alleged in this SCAC.
4 Defendants, and each of them, are now, and/or at all times mentioned in this SCAC
5 were the agents, servants, and/or employees of some or all other Defendants, and
6 vice-versa, and in doing the things alleged in this SCAC, Defendants are now and/or
7 at all times mentioned in this SCAC were acting within the course and scope of that
8 agency, servitude, and/or employment.

9 36. Defendants, and each of them, are now, and/or at all times mentioned in
10 this Complaint were members of, and/or engaged in, a joint venture, partnership and
11 common enterprise, and acting within the course and scope of, and in pursuance of
12 said joint venture, partnership, and common enterprise. Furthermore, each
13 defendant, may have been the alter ego and acting in the same or similar capacity as
14 Defendants, in the treatment of Plaintiffs, such that it would be unjust to provide
15 separate legal treatment of said Defendants and DOES 1-10, who, at all relevant
16 times, acted jointly and severally to deprive Plaintiffs of their rights under the laws
17 of California, New York, and Illinois. Defendants, and each of them, at all times
18 mentioned in this Complaint concurred and contributed to the various acts and
19 omissions of each and every one of the other Defendants in proximately causing the
20 complaints, injuries, and/or damages alleged in this Complaint. Defendants, and
21 each of them, at all times mentioned in this Complaint approved of, condoned
22 and/or otherwise ratified each and every one of the acts and/or omissions alleged in
23 this Complaint.

24 37. Defendants, and each of them, at all times mentioned in this Complaint
25 aided and abetted the acts and omissions of each and every one of the other
26 Defendants thereby proximately causing the damages alleged in this Complaint.

1 **IV. FACTUAL ALLEGATIONS**

2 **A. Electronic Cigarettes**

3 38. This action concerns BLU E-Cigarettes sold, marketed and distributed
4 by Defendants.

5 39. An electronic cigarette, or e-cigarette, is a device that simulates tobacco
6 smoking. E-cigarettes are designed to deliver a smoking-like “hit” of what E-
7 cigarette producers claim is vapor, usually containing nicotine, which is inhaled by
8 the user. They work through the use of a battery operated heating mechanism,
9 which typically converts a cartridge of solvent carriers containing glycerin, glycol,
10 propylene glycol, polyethylene glycol (also found in anti-freeze), natural, and
11 artificial flavors, and in most e-cigarettes, various proportions of nicotine, into
12 vapor. When a person inhales (“vapes”) from an e-cigarette, this mimics the taking
13 of a “drag” on a traditional tobacco cigarette. A heating device is activated, the
14 solution is converted into vapor, and the consumer breathes it in. Both the
15 activation of this heating element and the process of vaporizing the e-cig liquids that
16 follows this heating activation are independently linked to the production of
17 OX/ROS or reactive oxidative species which incurs measureable amounts of
18 oxidative stress in cells exposed to e-cigarettes and their “vapors.”⁴ Many e-
19 cigarettes, including those manufactured by Defendants, are similar in shape and
20 size to traditional cigarettes:

21 ///

22 ///

23 ///

24 ///

25
26 ⁴ Public Library of Science, *Vapors Produced by Electronic Cigarettes and E-Juices*
27 *with Flavorings Induce Toxicity, Oxidative Stress, and Inflammatory Response in*
28 *Lung Epithelial Cells and in Mouse Lung*, San Francisco, CA 2015.



40. As a result of aggressive and unrestricted marketing, increased restrictions on the use of traditional cigarettes, and a perception that e-cigarettes are “healthy” alternatives to traditional smoking, e-cigarette use has exploded since their introduction in the U.S. in 2007.⁵ Despite the perception of these devices as a “healthy” alternative, studies reveal multiple problems with e-cigarette device use including health risks to the user, the adverse impact on the health and safety of children, teens, and young adults, and a lack of scientific evidence showing that e-cigarettes are effective smoking cessation devices or that they reduce cigarette consumption.

⁵ See Ron Chapman, MD, MPH, California Department of Public Health, California Tobacco Control Program, State Health Officer’s Report on E-Cigarettes: A Community Health Threat, (January 2015), at 6, <http://www.cdph.ca.gov/programs/tobacco/Documents/Media/State%20Health-e-cig%20report.pdf>.

41. Defendants mislead their consumers by omitting material facts and making fraudulent partial misrepresentations on their packaging. Defendants failed to disclose to consumers that they are inhaling a concoction of chemicals (including formaldehyde) toxic to humans in the form of an aerosol. Unlike vapor—which is the natural gaseous state of a substance, element, or compound—users of BLU E-Cigarettes inhale an aerosol containing suspended particulate matter, and then exhale them into the environment, potentially causing second hand harm to bystanders. Mainstream and second hand e-cigarette aerosol has been found to contain a number of harmful chemicals.⁶ These harmful chemicals are inhaled by the consumers and then are released into the environment causing significant second-hand harm to those exposed. The National Center for Biotechnological Information published in-depth studies that prove the existence of these harmful additives in e-cig products like BLUs, and condensed their data into numerous charts so it can be accurately understood that these products exist in aerosol generated by e-cigarettes and pose a significant threat to human health.⁷

42. According to a 2011 study by the Centers for Disease Control and Prevention (“CDC”), as of that year, more than one fifth of smokers in the United States had tried electronic cigarettes, and 6% of all adults had tried them.⁸ According to a subsequent study by the CDC, nearly 1.8 million middle and high school students tried e-cigarettes in 2011 and 2012, including approximately

⁶ California Department of Public Health, California Tobacco Control Program, *State Health Officer’s Report on E-Cigarettes: A Community Health Threat*, Sacramento, CA 2015.

⁷ Cheng, Tianrong. National Center for Biotechnology Information, U.S. National Library of Medicine, *Chemical Evaluation of Electronic Cigarettes*, Bethesda, MD 2014.

⁸ Press Release, Centers for Disease Control and Prevention, *About one in five U.S. adult smokers have tried an electronic cigarette* (Feb. 28, 2013), http://www.cdc.gov/media/releases/2013/p0228_electronic_cigarettes.html.

1 160,000 students who had never used conventional cigarettes.⁹ The study also
 2 found that the number of U.S. middle and high school student e-smokers doubled
 3 between 2011 and 2012.¹⁰ Due to Defendants' failure to disclose the true negative
 4 health effects related to smoking BLU E-Cigarettes, the youth of today feel safe
 5 smoking BLUs and are widely unaware of the risks associated with them due to the
 6 lack of disclosures and fraudulent partial misrepresentations in their labelling.
 7 Defendants and other electronic cigarette companies are using very similar
 8 marketing tactics as Big Tobacco companies did before the negative health effects
 9 of their products became widely known and tobacco regulations became strictly
 10 enforced. The aim of Defendants by concealing these material facts and making
 11 these partial representations is to deliberately undermine the smoke free social
 12 norms that took years to establish.

13 43. However, one can reasonably infer from scientific evidence of the
 14 effects of the harmful ingredients these products contain, that these products are not
 15 safe or healthy. By misbranding this carcinogenic liquid as a juice, people are
 16 misled into believing that Defendants' e-cig juice is healthy, and Defendants are
 17 able to make their products more appealing toward teens and young people who
 18 tend to be the most allured by flavor. Although non-flavored e-cigarettes pose a
 19 significant human health risk, flavored e-cigarettes have been scientifically linked to
 20 even higher health risks than traditional tobacco flavorings, yet these types of e-
 21 cigarettes are being used most by the youth of today. Defendants and other e-
 22 cigarette companies have engineered and ramped up a large-scale marketing
 23 campaign for flavored e-cigarettes and an alarming amount of kids and teenagers

24
 25 ⁹ Morbidity and Mortality Weekly Report, Centers for Disease Control and
 26 Prevention, *Notes from the Field: Electronic Cigarette Use Among Middle and High*
 27 *School Students — United States, 2011–2012* (Sept. 6, 2013),
<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6235a6.htm>.

28 ¹⁰ *Id.*

1 have been experimenting with these potentially dangerous and addictive products as
2 a result.

3 44. According to analysts, sales of e-cigarettes in America in 2012 were
4 between \$300 million and \$500 million.¹¹ This was approximately double what they
5 were in the preceding year,¹² and sales more than doubled to \$1.5 billion in 2013.¹³
6 In 2014, sales reached \$7 billion.¹⁴

7 45. BLUs (including related paraphernalia) sell for a range of prices. As of
8 the filing of the original complaint, BLUs and related paraphernalia can be
9 purchased at stores throughout the United States, including California, New York,
10 and Illinois, as well as on Defendants' website.

11 46. On information and belief, most members of the proposed Classes have
12 bought more than one of Defendants' BLUs.

13 **B. The Food And Drug Administration ("FDA") Recently Enacted**
14 **Regulations Governing E-Cigarettes, But The FDA Expressly**
15 **Stated That Its New Regulations Do Not Preempt State Law,**
16 **Including Proposition 65.**

17 47. On May 10, 2016, the FDA published its Final Rule Deeming Tobacco
18 Products To Be Subject to the Federal Food, Drug, and Cosmetic Act ("FD&C
19 Act"), as Amended by the Family Smoking Prevention and Tobacco Control Act;
20 Restrictions on the Sale and Distribution of Tobacco Products and Required
21 Warning Statements for Tobacco Products (the "Rule"), and published public

22 ¹¹ See *E-cigarettes: Vape 'Em if You Got 'Em*, The Economist, Mar. 23, 2013.

23 ¹² *Id.*

24 ¹³ Horizon Investments, *E-Cigarettes: Proposed Regulations Could Prove To Be A*
25 *Game Changer*, Seeking Alpha, May 25, 2014.

26 ¹⁴ Peter Evans, *E-Cigarette Makers Face Rise of Fakes*, Wall Street Journal (Feb.
27 20, 2015), <http://www.wsj.com/articles/e-cigarette-makers-face-rise-of-counterfeits-1424441348>.
28

comment and response. (Available at <http://federalregister.gov/a/2016-10685>.)
According to the Executive Summary (at 28975):

This final rule has two purposes: (1) To deem all products that meet the definition of “tobacco product” under the law and subject them to the tobacco control authorities in chapter IX of the FD&C Act and FDA’s implementing regulations; and (2) to establish specific restrictions that are appropriate for the protection of the public health for the newly deemed tobacco products. ... Such products include e-cigarettes.

Rule at 28975, 28976.

48. The document further states: “Once deemed, tobacco products become subject to the FD&C Act and its implementing regulations. The FD&C Act requirements that will apply to newly deemed products include establishment registration and product listing, ingredient listing, HPHC testing and reporting, premarket submissions prior to the introduction of new products, and labeling requirements. Free samples of newly deemed tobacco products will also be prohibited. The additional provisions of this final rule include minimum age and identification requirements, vending machine restrictions, and required warning statements for packages and advertisements [regarding nicotine].” *Id.* at 28980.

49. The Rule expressly states that it does not preempt existing state requirements: “No State or local laws in effect at the close of the comment period were identified that FDA determined would be preempted by this final rule.” *Id.* at 28989. The heading of the applicable section, Part 1143, was specifically changed from “Required Warning Statements” to “Minimum Required Warning Statements” to make it clear that the Rule does not preempt any state law requirements. *Id.* These non-preempted state laws specifically include Proposition 65. *Id.*

C. Despite Knowing That The Aerosol Emitted By BLU E-Cigarettes Contains Formaldehyde And Other Harmful Carcinogens,

Defendants Intentionally Concealed These Dangers From Consumers.

1. Defendants Are, And Have Been, Well Aware That Formaldehyde And Other Harmful Chemicals Are Present in The Aerosol Produced by BLU E-Cigarettes.

50. In August 2014, Defendant Lorillard submitted comments on the FDA's proposed Deeming Rule which discussed in detail the presence of formaldehyde and other harmful chemicals in e-cigarette aerosol. *See* FDA Docket No. FDA-2014-N-0189-75849 (August 7, 2014), at 38-49 *available at* <https://www.regulations.gov/#!documentDetail;D=FDA-2014-N-0189-75849>. In its comments, Lorillard acknowledged its awareness of the FDA's 2009 report (referenced below, ¶ 56) showing that e-cigarette aerosol contains known carcinogens and other toxic chemicals. *See id.* 24 n. 43; *see also id.* at 14 n. 16. Lorillard further stated that it acquired the BLU E-Cigarette brand in 2012, and thereafter it took certain steps to address the health and safety concerns raised by the FDA. Specifically, Lorillard stated that it took on the responsibility of ensuring the safety of its BLU E-Cigarettes, including the safety of constituents in the aerosol produced by such products. *Id.* at 9-12.

51. As part of Lorillard's alleged "stewardship program" with respect to the BLU E-Cigarettes, Lorillard admitted that it had "conducted various toxicological, environmental and clinical testing of [BLU E-Cigarettes] to assess product safety," including conducting the following:

- "a toxicology assessment of the e-liquid and aerosol of certain [BLU E-Cigarettes]"; and
- "aerosol testing using a modified smoking machine to measure the level of certain smoke constituents in the aerosol of certain [BLU E-Cigarettes]."

1 *Id.* at 10-11. Lorillard stated that it intended to publish the results of this research
2 (*id.* at 12) but, nearly two years later, neither Lorillard nor any other Defendant has
3 done so.

4 52. Lorillard's comment included reviews of a host of studies that were
5 published in the several years preceding its filing, many of which found potential
6 risks associated with e-cigarette use. Lorillard's conclusion concerning these
7 studies was that there are "level[s] of toxicants in electronic cigarettes" but such
8 levels are lower than the toxicants found in the smoke of conventional cigarettes.
9 E.g. *id.* at 14. Defendants apparently believe that although BLU E-Cigarettes
10 expose users to harmful chemicals, Defendants have no obligation to inform users of
11 the risks or exposure. Tobacco, however, is the single greatest cause of preventable
12 illness and premature death in the United States. A product may be less risky than
13 tobacco and still pose material risks of which a consumer would want, and has a
14 right, to be informed.

15 53. Defendants are also well aware of the presence of formaldehyde in the
16 aerosol produced by BLU E-Cigarettes through their membership and participation
17 in the Cooperation Centre for Scientific Research Relative to Tobacco
18 ("CORESTA"). CORESTA is a membership organization consisting of a number of
19 major tobacco and e-cigarette companies that was formed to conduct and respond to
20 scientific research relating to tobacco products and health. Defendant Fontem's
21 parent company, Imperial Tobacco Ltd., is one of CORESTA's thirteen Board
22 Member Organizations which are responsible for governing the organization. In
23 2013, CORESTA formed an E-Cigarette Task Force ("Task Force") in order to,
24 among other things, "gather and share preliminary data on analysis relevant to e-
25 cigarettes with a view to making recommendations for product testing."
26 <https://www.coresta.org/groups/e-cigarettes>. Indeed, one of the principal aims of
27 the Task Force was to develop a methodology for testing the aerosol produced by e-
28 cigarettes. *Id.* Defendant Lorillard is not only a member of the Task Force, but one

1 of its employees was the Task Force Secretary. Although the Task Force has
2 published a technical report and recommended test protocol regarding the collection
3 of data on constituents in e-cigarette aerosol, Defendants have never published any
4 of the results of the testing on e-cigarette aerosol performed by CORESTA pursuant
5 to the Task Force's test protocol.

6 54. Clearly, based on these facts alone, Defendants are fully aware that
7 their BLU E-Cigarettes are emitting aerosol that contains harmful and toxic
8 carcinogens, have admittedly performed studies to confirm those findings, but have
9 failed to disclose those findings to the consuming public. Defendants are
10 intentionally and actively concealing the results of these studies because they know
11 that if those studies were disclosed to the public, they would affect their sales,
12 putting profits over safety.

13 **2. Independent Studies Published by Other Reliable Sources**
14 **Have Confirmed That E-Cigarettes, Specifically BLU E-**
15 **Cigarettes, Emit Harmful, Cancer Causing Carcinogens.**

16 55. Because of the rapid growth in the use of electronic cigarettes by
17 consumers in recent years, an increasing number of government agencies and
18 research facilities have begun to conduct studies concerning the potential health
19 impact and risks of these devices. These studies have found, *inter alia*: (a)
20 measurable amounts of carcinogens, toxins, and other contaminants in e-cigarettes
21 that are, or potentially are, disease-causing; (b) harmful potential side effects of e-
22 cigarettes; and (c) that more study is needed to determine the full range of health
23 dangers of e-cigarettes.

1 56. In 2009, the United States Food and Drug Administration (“FDA”)
 2 conducted a study of two brands of cigarettes.¹⁵ The FDA issued a summary of the
 3 results of that study,¹⁶ making, *inter alia*, the statements in the following block
 4 quotes (language in brackets added):

- 5 • [the] FDA’s Center for Drug Evaluation, Office of Compliance
 6 purchased two samples of electronic cigarettes and components from
 7 two leading brands. These samples included 18 of the various
 8 flavored, nicotine, and no-nicotine cartridges offered for use with
 9 these products. These cartridges were obtained in order to test some
 10 of the ingredients contained in them and inhaled by users of electronic
 11 cigarettes.
- 12 • FDA’s Center for Drug Evaluation, Division of Pharmaceutical
 13 Analysis (DPA) analyzed the cartridges from these electronic
 14 cigarettes for nicotine content and for the presence of other tobacco
 15 constituents, some of which are known to be harmful to humans,
 16 including those that are potentially carcinogenic or mutagenic.
- 17 • DPA’s analysis of the electronic cigarette samples *showed that the*
 18 *product contained detectable levels of known carcinogens and toxic*
 19 *chemicals to which users could potentially be exposed.* [Emphasis
 20 added.]
- 21 • DPA’s testing also suggested that *quality control processes used to*
 22 *manufacture these products are inconsistent or non-existent.*
 23 [Emphasis added.]

24
 25
 26 ¹⁵ See FDA Evaluation of E-cigarettes, DPATR-FY-09-23, available at
 27 <http://www.fda.gov/downloads/drugs/scienceresearch/ucm173250.pdf>. The brands
 28 tested were not BLUs but contain similar primary ingredients to BLUs.

¹⁶ <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146>.

- 1 • Specifically, DPA’s analysis of the electronic cigarette cartridges
- 2 from the two leading brands revealed the following:
- 3 • *Certain tobacco-specific nitrosamines which are human*
- 4 *carcinogens were detected in half of the samples tested.*
- 5 • *Tobacco-specific impurities suspected of being harmful to*
- 6 *humans—anabesine, myosmine, and β -nicotyrine—were*
- 7 *detected in a majority of the samples tested.*
- 8 • Three different electronic cigarette cartridges with the same
- 9 label were tested and each cartridge emitted a markedly
- 10 different amount of nicotine with each puff. The nicotine
- 11 levels per puff ranged from 26.8 to 43.2 mcg nicotine/100
- 12 mL puff. [Emphasis added.]

13 57. The FDA issued a contemporaneous consumer health brochure titled,
 14 “FDA Warns of Health Risks Posed by E-Cigarettes,”¹⁷ in which Margaret A.
 15 Hamburg, M.D., commissioner of food and drugs, stated, “The FDA is concerned
 16 about the safety of these products and how they are marketed to the public.” The
 17 FDA also issued a safety alert¹⁸ repeating the risks and noting that “[t]hese products
 18 do not contain any health warnings comparable to FDA-approved nicotine
 19 replacement products or conventional cigarettes.”

20 58. Indeed, in the FDA’s 2009 study, all four of the major tobacco-specific
 21 nitrosamines, N-nitrosonicotine (NNN), N-nitrosoanabesine (NAB), N-
 22 nitrosoanatabine (NAT) and 4-(methylnitrosamino)-1-(3-pyridyl)-1-butanone
 23 (NNK), were found in e-cigarette cartridges.

24 ¹⁷Retrievable at
 25 <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm173401.htm>.

26 ¹⁸ Retrievable at
 27 [http://www.fda.gov/20NewsEvents/Newsroom/PressAnnouncements/ucm173222](http://www.fda.gov/20NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm).
 28 htm.

1 59. Since the FDA released the results of its 2009 study and its
 2 concomitant warning concerning e-cigarettes generally, new studies have been
 3 emerging discussing the risks and dangers of e-cigarettes. These studies have
 4 concerned a variety of brands and products, including Defendants' BLU E-
 5 Cigarettes; however, because e-cigarettes generally operate in a similar manner, and
 6 contain similar primary ingredients, even those studies which are not identified
 7 below as directly having reviewed BLUs are relevant hereto.

8 60. The health risks and unknowns concerning e-cigarettes are
 9 compounded by the reality that e-cigarette users smoke differently than traditional
 10 smokers. For example, a study of eight traditional and four e-cigarettes found, *inter*
 11 *alia*, that, e-cigarettes “***required a stronger vacuum [inhalation strength] to smoke***
 12 ***than conventional [tobacco] brands.***” Trtchounian, A., *Conventional and*
 13 *Electronic cigarettes (e-cigarettes) have different smoking characteristics*, Nic. &
 14 Tob. Res., Vol. 12, No. 9 (Sept. 2010), at 911.¹⁹ (Emphasis added.) The study
 15 states, “the effects of this on human health could be adverse.” *Id.* at 905. According
 16 to researchers, as a general matter, stronger puffing has the potential for “leading to
 17 cancer in the deeper lung regions.” *Lung Deposition Analyses of Inhaled Toxic*
 18 *Aerosols in Conventional and Less Harmful Cigarette Smoke: A Review*,
 19 *International Journal of Environmental Research and Public Health*, September 23,
 20 2013.²⁰

21 61. Another 2010 study found various kinds of carbonyls, including
 22 acrolein and formaldehyde, in e-cigarette samples, and found that “High
 23 concentrations of hazardous pollutants such as formaldehyde, acetaldehyde and
 24

25 ¹⁹ Retrievable at
 26 [http://edge.rit.edu/content/P12056/public/e%20cig%20vs%20conventional%20cig.p](http://edge.rit.edu/content/P12056/public/e%20cig%20vs%20conventional%20cig.pdf)
 27 [df.](http://edge.rit.edu/content/P12056/public/e%20cig%20vs%20conventional%20cig.pdf)

28 ²⁰ Retrievable at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3799535/>

1 acrolein were detected by using the” testing system that those researchers had
2 developed.²¹

3 62. E-cigarettes are a subject of concern to major international entities.
4 According to a presentation given by the World Health Organization (“WHO”) to
5 the European Parliament at a Workshop on Electronic Cigarettes on May 7, 2013,
6 “electronic cigarettes are a controversial issue for which additional studies and
7 evidence are needed.” That presentation referenced recent findings from Turkey
8 that:

9 *indicate that propylene glycol and tobacco specific N-nitrosamines,*
10 *a powerful carcinogen, were found in the majority of samples.*

11 Toxins from the e-cigarette averaged around 20% of those of a regular
12 cigarette. It was also found that similarly labeled ENDS [Electronic
13 Nicotine Delivery Systems] cartridges emit different amounts of
14 nicotine, and a nicotine overdose may occur which can have serious
15 side effects. *There are currently no studies available on safety and*
16 *efficacy of long-term e-cigarettes use.* (Emphasis added).

17 63. A study conducted by The National Center for Biotechnological
18 Information found that nicotine levels in END devices like BLU E-Cigarettes vary
19 and are often mislabeled. Thus the efficacy and consistency of nicotine yields and
20 the delivery of nicotine is not uniform in products across the brand and labels on
21 these products do not adequately reflect the actual quantity of nicotine levels found
22 in these products. As a result of these studies, this Center recommended that e-
23 cigarette manufacturers like Defendants enforce greater quality standards in their
24 products.

25 ²¹ S. Uchiyama, Y. Inaba and N. Kunugita, Determination of acrolein and other
26 carbonyls in cigarette smoke using coupled silica cartridges impregnated with
27 hydroquinone and 2,4-dinitrophenylhydrazine, Journal of Chromatography. 1217
28 (2010) 4383-4388.

64. Scientists from the University of Athens, Greece also conducted a study using 32 participants that found **“using an e-cigarette caused an instant increase in airway resistance that lasted for 10 minutes** in the majority of the participants.” Christian Nordqvist, *Electronic Cigarettes Harm The Lungs*, MedicalNewsToday.com (Sept. 3, 2012) (emphasis in original).

65. Preliminary studies conducted by the California Department of Public Health have also shown that smoking e-cigarettes containing nicotine for just five minutes can cause similar lung irritation, inflammation, and effect on blood vessels as smoking a traditional cigarette, which poses a significant risk of heart attacks and cardiac problems. *See* State Health Officer’s Report on E-Cigarettes: *A Community Health Threat*, published by the California Department of Public Health on January 28, 2015, p. 5.

66. In July 2013, the WHO stated that “[m]ost ENDS [Electronic Nicotine Delivery Systems] contain large concentrations of propylene glycol, which is a known irritant when inhaled,” that “[t]he testing of some of these products also suggests the presence of other toxic chemicals, aside from nicotine,” and that the safety of these devices “has not been scientifically demonstrated.”²²

67. Numerous other studies have been performed by universities and other research centers, and have reported similar concerns about the potential for health risks associated with electronic cigarettes.

²² Available at http://www.who.int/tobacco/communications/statements/electronic_cigarettes/en/. *See also* Wieslander G., *Experimental exposure to propylene glycol mist in aviation emergency training: acute ocular and respiratory effects*, *Occup Environ Med* 58: 649-655, Choi H, (2010), *Common household chemicals and the allergy risks in pre-school age children*, *PLoS One* 5: e13423, and Moline JM, *Health effects evaluation of theatrical smoke, haze and pyrotechnics* (2000). *See also* New Hampshire Department of Environmental Services, *Ethylene Glycol and Propylene Glycol: Health Information Summary*, Environmental Fact Sheet,

68. For example, a 2013 report titled *Electronic Cigarettes – an Overview*, by the German Cancer Research Center,²³ which was based on a comprehensive review of literature in the field, found in summary as to “Product characteristics” (the following bullet pointed paragraphs are block quoted text):

- E-cigarettes cannot be rated as safe at the present time.
- Consumers do not have reliable information on product quality.
- Electronic cigarettes have various technical flaws (leaking cartridges, accidental intake of nicotine when replacing cartridges, possibility of unintended overdose.)
- Some manufacturers provide insufficient and partly wrong information about their liquids.

As to “Health Effects,” the summary stated (the following bullet pointed paragraphs are block quoted text):

- The liquids contain ingredients that on short-term irritate air- ways and may lead to allergic reactions and which may be harmful to health when inhaled repeatedly over a prolonged period of time.
- The aerosol of some liquids contains harmful substances (formaldehyde, acetaldehyde, acrolein, diethylene glycol, nickel, chromium, lead).
- The functionality of electronic cigarettes can vary considerably (aerosol production, nicotine delivery into aerosols).
- Adverse health effects for third parties exposed cannot be excluded because the use of electronic cigarettes leads to emission of fine and ultrafine inhalable liquid particles [otherwise known as volatile

²³ Published in Red Series, Tobacco Prevention and Tobacco Control, Vol. 19: *Electronic Cigarettes – An Overview* (Heidelberg 2013), available at [http://www.dkfz.de/en/presse/download/RS-Vol. 19-E-Cigarettes-EN/pdf](http://www.dkfz.de/en/presse/download/RS-Vol.19-E-Cigarettes-EN/pdf).

1 organic compounds (VOCs) that can travel deep into the lungs and
2 cause severe inflammation]. These products also emit nicotine and
3 cancer-causing substances into indoor air.

4 69. Among the more specific risks identified by the German Cancer
5 Research Center are that, *inter alia* (the following bullet pointed paragraphs are
6 block quoted text, the language in brackets has been added, and all internal citations
7 are omitted):

- 8 • Electronic cigarettes do not extinguish naturally after about ten
9 puffs like conventional cigarettes, but can be used for hundreds of
10 puffs without a break. When using them as intended, consumers
11 may therefore get a dangerous amount of nicotine by taking too
12 many puffs, which may even result in serious symptoms of nicotine
13 poisoning. [*Id.* at 4-5.]
- 14 • Not even nicotine-free liquids are necessarily harmless. Their main
15 ingredients (propylene glycol, glycerine, flavours) have been
16 approved for use in food, but this does not necessarily mean that
17 they are also safe when they are repeatedly inhaled over a prolonged
18 period of time – as they are when used in electronic cigarettes.
19 There are currently no studies available on the effects of long-term
20 use of e-cigarettes. [*Id.* at 7.]
- 21 • To date, only [a] few studies have been conducted on potential
22 health risks associated with inhaling propylene glycol – as one does
23 when using electronic cigarettes as intended. According to these
24 studies, inhaling propylene glycol may affect airways. Short-term
25 exposure to propylene glycol in indoor air (309 mg/m³ for one
26 minute) already causes irritations in the eyes, throat, and airways.
27 Long-term exposure to propylene glycol in indoor air may raise
28 children's risk of developing asthma. People who have frequently

1 been exposed to theatrical fogs containing propylene glycol are
2 more likely to suffer from respiratory, throat, and nose irritations
3 than do unexposed people. We may therefore assume that the use of
4 e-cigarettes, which involves inhaling propylene glycol vapours
5 several times daily, may cause respiratory irritations. This applies,
6 in particular, to individuals with impaired airways and to smokers
7 who switch to e-cigarettes or use them additionally, because
8 smokers usually already have impaired airways. [*Id.*]

- 9 • Glycerine is considered generally safe for oral intake and is used in
10 food production as a humectant and as a solution carrier in flavors.
11 However, this does not necessarily mean that it is also safe for
12 inhalation – as in e-cigarettes if used as intended. These concerns
13 are not unfounded. The specialist journal *Chest* reports about a case
14 study of a patient with lipoid pneumonia caused by glycerine-based
15 oils from the aerosol of electronic cigarettes. The link appears to be
16 clear, since symptoms disappeared when the patient stopped using
17 electronic cigarettes. [*Id.* at 7-8.]
- 18 • Individual liquids were found to contain small amounts of
19 nitrosamines. In addition, formaldehyde, acetaldehyde and acrolein
20 were measured in the aerosol of various e-cigarettes, although
21 considerably less than in cigarette smoke. Formaldehyde and
22 acrolein were only found in glycerine-containing liquids; they
23 probably form upon heating of glycerine. Acrolein is absorbed by
24 the user: A decomposition product of acrolein was detected in the
25 urine of e-cigarettes users, although considerably less than after
26 smoking conventional cigarettes. In addition, nickel and chromium
27 were detected in the aerosol, with higher levels of nickel measured
28 than it is known to be present in cigarette smoke. The

1 aforementioned substances have been classified by the German
 2 Research Foundation (Deutsche Forschungsge-meinschaft, DFG)
 3 and the International Agency for Research on Cancer (IARC) as
 4 carcinogenic. Since there is no safe threshold value for these
 5 substances, it cannot be excluded that using electronic cigarettes
 6 increases cancer risk, even though these substances may be present
 7 in very small amounts. [*Id.*]

- 8 • Data on the impact of e-cigarette use on pulmonary function are not
 9 conclusive. A study involving 30 participants reports adverse
 10 effects on pulmonary function after using an electronic cigarette for
 11 five minutes; however, the long-term pulmonary effects of e-
 12 cigarette use are unknown at the present time. [*Id.*]
- 13 • There are currently no studies available on the effects of long-term
 14 use of e-cigarettes. [*Id.* at 7.]

15 70. Some of the many studies considered in the above-referenced Red
 16 Series review are among those discussed in more detail in the individual study
 17 references below. One such study was *Short-term Pulmonary Effects of Using an*
 18 *Electronic Cigarette*, published in June 2012 in *Chest*, the journal of the American
 19 College of Chest Physicians. That study expressly found both that e-cigarettes had
 20 adverse health effects and the need for further research:

21 *E-cigarettes assessed in the context of this study were found to have*
 22 *immediate adverse physiologic effects after short-term use that are*
 23 *similar to some of the effects seen with tobacco smoking*; however,
 24 the long-term health effects of e-cigarette use are unknown but
 25 potentially adverse and worthy of further investigation. [Emphasis
 26 added.]

27 ///

28 ///

1 71. A French article published in the consumer publication *60 millions de*
 2 *consommateurs* on August 26, 2013, reported that e-cigarettes are potentially
 3 carcinogenic. It based its findings upon testing 10 different models of e-cigarettes.²⁴
 4 It found “carcinogenic molecules in a significant amount” in the vapor produced in
 5 the products. It further determined that “[i]n three cases out of 10, for products with
 6 or without nicotine, the content of formaldehyde was as much as the levels found in
 7 some conventional cigarettes.” It found acrolein, a toxic molecule emitted in
 8 quantities “that exceeded the amount found in the smoke of some cigarettes.”
 9 “Potentially toxic” trace metals were also discovered in some of the models.

10 72. A study by scientists at the University of California Riverside,
 11 published on March 20, 2013 in the journal PLoS One, found that:

12 one [unidentified] brand of e-cigarettes generates aerosols containing
 13 micron particles comprised of tin, silver, iron, nickel, aluminum and
 14 silicate, as well as nanoparticles containing tin, chromium and nickel,
 15 which are elements that cause respiratory distress and disease. Those
 16 metals come from the wires inside the cartridge, while silicate
 17 particles may originate from the fiber glass [*sic*] wicks.

18 Williams, M., *et al.*, *Metal and Silicate Particles Including Nanoparticles Are*
 19 *Present in Electronic Cigarette Cartomizer Fluid and Aerosol*, PLoS ONE 8(3):
 20 e57987 (2013).

21 73. Also, according to that study by the University of California at
 22 Riverside:

23 A total of 22 elements were identified in EC [electronic cigarette]
 24 aerosol, and three of these elements (lead, nickel, and chromium)

25
 26 ²⁴ Quotes in this paragraph are derived from B. McPartland, “Report: e-cigarettes are
 27 ‘potentially carcinogenic’” an article published in *The Local*, a source for “France’s
 28 News in English,” on August 26, 2013, describing this study.

1 appear on the FDA's "harmful and potentially harmful chemicals"
 2 list. Lead and chromium concentrations in EC aerosols were within
 3 the range of conventional cigarettes, while nickel was about 2–100
 4 times higher in concentration in EC aerosol than in Marlboro brand
 5 cigarettes (Table 1). Adverse health effects in the respiratory and
 6 nervous systems can be produced by many of the elements in Table 1,
 7 and many of the respiratory and ocular symptoms caused by these
 8 elements have been reported by EC users in the Health and Safety
 9 Forum on the Electronic Cigarette Forum website ([http://www.e-](http://www.e-cigarette-forum.com/forum/health-safety-e-smoking/)
 10 [cigarette-forum.com/forum/health-safety-e-smoking/](http://www.e-cigarette-forum.com/forum/health-safety-e-smoking/)). Although [a
 11 table reflecting this research] was constructed to emphasize the effects
 12 of the elements found in aerosol on the respiratory system, other
 13 systems, such as the cardiovascular and reproductive systems, can be
 14 affected by most of the elements in EC aerosol. ***EC consumers***
 15 ***should be aware of the metal and silicate particles in EC aerosol and***
 16 ***the potential health risks associated with their inhalation.***

17 [Emphasis added.]

18 74. A study published on September 23, 2013 in the International Journal
 19 of Environmental Research and Public Health titled, *Lung Deposition Analyses of*
 20 *Inhaled Toxic Aerosols in Conventional and Less Harmful Cigarette Smoke: A*
 21 *Review*, found that there were potential risks associated with e-cigarettes that were
 22 not a factor in traditional cigarettes, including "compensatory smoking (*i.e.*, stronger
 23 puffing) leading to cancer in the deeper lung regions," and that "[u]nknown
 24 reactions between some components in newly designed filters (or other new
 25 additives) may lead to the production of carcinogens or other toxicants."

26 75. On December 15, 2013, the American Society for Cell Biology issued a
 27 press release concerning the findings of researchers at Brown University, who
 28 determined that, "Nicotine, the major addictive substance in cigarette smoke,

1 contributes to smokers' higher risk of developing atherosclerosis, the primary cause
 2 of heart attacks," and that, as such, e-cigarettes, which contain nicotine, as BLUs do,
 3 "may not significantly reduce risk for heart disease."²⁵

4 76. In an article published in the Contemporary Reviews in Cardiovascular
 5 Medicine titled, *E-Cigarettes A Scientific Review*, on May 13, 2014, the authors
 6 emphasized the importance of "assess[ing] e-cigarette toxicant exposure and ...
 7 health effects" to "protect[] the entire population—children and adults, smokers and
 8 nonsmokers—in the context of how the tobacco industry is marketing and
 9 promoting these products." The authors noted based on empirical studies that
 10 "[c]onsumer perceptions of the risks and benefits and decisions to use e-cigarettes
 11 are heavily influenced by how they are marketed." The authors also discussed the
 12 secondhand exposure of e-cigarettes (the following bullet pointed paragraphs are
 13 block quoted text, the language in brackets has been added, and all internal citations
 14 are omitted):

- 15 • E-cigarettes do not burn or smolder the way conventional
 16 cigarettes do, so they do not emit side-stream smoke; however,
 17 bystanders are exposed to aerosol exhaled by the user.
- 18 • [While] [t]oxins in the e-cigarette aerosol were at much lower
 19 levels compared with the conventional cigarette emissions[,] [the
 20 studies] found ... levels of formaldehyde, acetaldehyde, isoprene,
 21 acetic acid, 2-butanodione, acetone, propanol, propylene glycol,
 22 and diacetyl (from flavoring), traces of apple oil (3-methylbutyl-3-

23
 24
 25 ²⁵ American Society for Cell Biology, "Nicotine drives cell invasion that contributes
 26 to plaque formation in coronary arteries, Research indicates e-cigarettes may not
 27 significantly reduce risk for heart disease," Dec. 15, 2013, available at
 28 http://www.eurekalert.org/pub_releases/2013-12/asfc-ndc112613.php (last accessed
 Jan. 7, 2014).

1 methylbutanoate), and nicotine (with differing levels depending on
2 the specific protocols) emitted into the air.

- 3 • [While the toxicity level was lower in e-cigarettes studied,] the
4 particle size distribution and number of particles delivered by e-
5 cigarettes are similar to those of conventional cigarettes ...
6 Smokers exhale some of these particles, which exposes bystanders
7 to “passive vaping.” Like cigarettes, e-cigarette particles are small
8 enough to reach deep into the lungs and cross into the systemic
9 circulation. At a minimum, these studies show that e-cigarette
10 aerosol is not merely “water vapor” as is often claimed in the
11 marketing for these products. Tests on e-cigarettes show much
12 lower levels of most toxicants, but not particles, than conventional
13 cigarettes. The thresholds for human toxicity of potential toxicants
14 in e-cigarette vapor are not known, and the possibility of health
15 risks to primary users of the products and those exposed passively
16 to their emissions must be considered.

17 77. According to a May 18, 2014 article,²⁶ researchers at the VA San Diego
18 Healthcare System and the University of California, San Diego, tested the effects of
19 e-cigarette vapor on live methicillin-resistant *Staphylococcus aureus* and human
20 epithelial cells. The researchers found that while e-cigarette vapor increases
21 bacterial virulence, the vapor decreases the ability of human epithelial cells to kill
22 pathogens. Thus, it was concluded that “even if e-cigarettes may not be as bad as
23 tobacco, they still have measurable detrimental effects on health.”

24 78. Studies conducted by the Public Library of Science provided an in-
25 depth study on additional adverse health effects of e-cigarettes and specifically used

26
27 ²⁶ *E-cigarettes may boost resistance of drug-resistant pathogens*, Eurekalert! (May
28 14, 2014).

1 BLUs as a part of their research.²⁷ These studies linked these products to cellular
2 oxidative stress and inflammation of cells exposed to aerosol emissions released by
3 electronic cigarettes. E-Cigarettes have been significantly linked to the production
4 of reactive oxidative species (OX/ROS), especially in flavored cartridges like the
5 ones sold by Defendants. These studies found that consumption of e-cigarette
6 aerosols increased the fluorescence intensity levels in exposed cells which have
7 been linked to increased levels of OX/ROS. OX/ROS has been shown to cause
8 oxidative stress within cells and produces an injurious response in bodily processes.
9 E-cigarette aerosols have also affected cell viability and the high levels of
10 fluorescent substances found in these aerosols produce an inflammatory response in
11 human bronchial epithelial airway cells because they cause secretions of Il-8 and Il-
12 6 which contributes to the bodily inflammatory response. This condition has been
13 proven to be further exacerbated by nicotine consumption. When e-liquids were
14 applied directly to lung fibroblasts there were significant signs of epithelial cell
15 inflammation, cell stress, and other phenotypic abnormalities. Studies were
16 conducted on mice to produce evidence of pulmonary inflammation as well by
17 measuring their bronchoalveolar lavage fluid levels after 3 days of exposure to e-
18 cigarette aerosols. After the exposure the Il-6 levels in mice significantly increased
19 and the increase of this interleukin has been strongly correlated with an increase in
20 pulmonary inflammation. Because BLUs were specifically among the brands tested
21 in these studies, strong connections can be legitimized between smoking BLUs and
22 experiencing these serious health issues. Defendants' failure to disclose these
23 material facts to the consuming public and lack of completely truthful labels on their
24 products are deliberate and widely successful attempts to mislead consumers.

25
26 ²⁷ See Qun Wu, et al., *Electronic Cigarette Liquid Increases Inflammation and Virus*
27 *Infection in Primary Human Airway Epithelial Cells*, PLoS ONE 9(9) (Sept. 22,
28 2014); see also Sussan TE, et al., fn. 30, *infra*.

1 Defendants and other major e-cigarette companies justify these unethical business
2 practices by using unreliable studies that are conducted by private institutions by
3 people who have a stake in the e-cigarette industry. This opens up the possibility of
4 an existing bias that has a significant effect on the results and interpretations of the
5 findings of these studies, putting the validity of the tests conducted into question.

6 79. On May 15, 2014, the Nicotine & Tobacco Research published a study
7 titled, *Carbonyl Compounds in Electronic Cigarette Vapors – Effects of Nicotine*
8 *Solvent and Battery Output Voltage*. Although BLUs were not one of the brands
9 studied, the study has significant implications on BLUs because the brands studied
10 contained the same primary ingredients used in BLUs (*i.e.*, glycerin and/or
11 propylene glycol). The study performed by the Roswell Park Cancer Institute in
12 Buffalo, NY found that (the following bullet pointed paragraphs are block quoted
13 text):

- 14 • **Introduction:** Glycerin (VG) and propylene glycol (PG) are the
15 most common nicotine solvents used in e-cigarettes (ECs). It has
16 been shown that at high temperatures both VG and PG undergo
17 decomposition to low molecular carbonyl compounds, including
18 the carcinogens: formaldehyde and acetaldehyde. The aim of the
19 study was to evaluate how various product characteristics,
20 including nicotine solvent and battery output voltage, affect the
21 levels of carbonyls in EC vapor.
- 22 • **Methods:** Twelve carbonyl compounds were measured in vapors
23 from 10 commercially available nicotine solutions and from three
24 control solutions composed of pure glycerin, pure propylene
25 glycol, or a mixture of both solvents (50:50). EC battery output
26 voltage was gradually modified from 3.2 to 4.8 V. Carbonyl
27 compounds were determined using HPLC/DAD method.

- 1 • **Results:** Formaldehyde and acetaldehyde were found in 8 of 13
2 samples. The amounts of formaldehyde and acetaldehyde in
3 vapors from lower voltage EC were on average 13- and 807-fold
4 lower than in tobacco smoke, respectively. The highest levels of
5 carbonyls were observed in vapors generated from PG-based
6 solutions. Increasing voltage from 3.2 to 4.8 V resulted in 4 to
7 over 200 times increase in formaldehyde, acetaldehyde, and
8 acetone levels. The levels of formaldehyde in vapors from high-
9 voltage device were in the range of levels reported in tobacco
10 smoke.
- 11 • **Conclusions:** Vapors from EC contain toxic and carcinogenic
12 carbonyl compounds. Both solvent and battery output voltage
13 significantly affect levels of carbonyl compounds in EC vapors.
14 High-voltage EC may expose users to high levels of carbonyl
15 compounds.

16 80. A 2014 study also noted the dangers of e-cigarettes and the formation
17 of formaldehyde. Published in Archives of Toxicology, this study found that e-
18 cigarette vapor contained “similar levels of formaldehyde . . . compared to
19 conventional cigarettes.”²⁸

20 81. On January 28, 2015, the California Department of Public Health
21 issued a Health Advisory summarizing the public health risks associated with
22 electronic cigarettes and making recommendations for health care professionals.
23 Under “Toxicity of E-cigarettes and Exposure to Emissions” the advisory states, in
24 part:

25
26
27 ²⁸ Christoph Hutzler et al., *Chemical hazards present in liquids and vapors of*
28 *electronic cigarettes*, Arch Toxicol 88:1295-1308 (June 11, 2014).

- 1 • **The heated e-liquid forms an aerosol that contains high**
2 **concentrations of ultrafine particles that are inhaled and**
3 **become trapped in the lungs.** Chemicals in the aerosol are
4 absorbed through the blood stream and delivered directly to the
5 brain and all body organs. [Footnote omitted.]
- 6 • While several studies found lower levels of carcinogens in the
7 e-cigarette aerosol compared to smoke emitted by traditional
8 cigarettes, **both the mainstream and secondhand e-cigarette**
9 **aerosol have been found to contain at least ten chemicals**
10 **that are on California’ Proposition 65 list of chemicals**
11 **known to cause cancer, birth defects or other reproductive**
12 **harm,** including acetaldehyde, benzene, cadmium,
13 formaldehyde, isoprene, lead, nickel, nicotine, n-
14 nitrosonornicotine, and toluene. [Emphasis added.]
- 15 • E-cigarette emissions are also a health concern for those
16 exposed to secondhand aerosol. Although not as dangerous as
17 secondhand smoke from combustible tobacco products, people
18 exposed to e-cigarette aerosol absorb nicotine at levels
19 comparable to people exposed to secondhand smoke. **E-**
20 **cigarette emissions also contain volatile organic compounds**
21 **(VOCs) and fine/ultrafine particles. These ultrafine**
22 **particles can travel deep into the lungs where they get**
23 **trapped and may lead to tissue inflammation.** [Emphasis
24 added.] [Footnote omitted.]

25 82. The advisory also notes that “[p]reliminary studies show that using a
26 nicotine-containing e-cigarette for just five minutes causes similar lung irritation,
27 inflammation and effect on blood vessels as smoking a traditional cigarette, which
28 may increase the risk of a heart attack.” With respect to cessation claims, the

1 advisory explains that “[t]here is no scientific evidence that e-cigarettes help
2 smokers to successfully quit traditional cigarettes or that they reduce consumption
3 of traditional cigarettes.” In fact, the advisory points out that the contrary is true:

4 One study found that 89 percent of e-cigarette users are still using
5 [regular cigarettes] one year later and another study found that e-
6 cigarette users are a third less likely to quit cigarettes. These studies
7 suggest that e-cigarettes are effectively inhibiting people from
8 successfully kicking their nicotine addiction. In addition, dual use of
9 cigarettes and e-cigarettes is continuing to rise, which may diminish
10 any potential benefits of cutting back on traditional cigarettes.
11 Continuing to smoke traditional cigarettes, while also using e-
12 cigarettes, does not reduce the cardiovascular health risks. [Footnotes
13 omitted.]

14 83. In the recommendations to health care providers section, the advisory
15 recommends that health care professionals “[a]dvice and warn e-cigarette users
16 about toxicity of these products to themselves and those subjected to secondhand
17 emissions.”

18 84. In January of 2015, a study demonstrated that e-cigarettes produce
19 formaldehyde, which is present in the aerosol inhaled by users.²⁹ The study
20 explained that “[f]ormaldehyde is a known degradation product of propylene glycol
21 that reacts with propylene glycol and glycerol during vaporization to produce
22 hemiacetals [].” The study found “more than 2% of the total solvent molecules
23 have converted to formaldehyde-releasing agents, reaching concentrations higher
24 than concentrations of nicotine. This happens when propylene glycol and glycerol
25 are heated in the presence of oxygen to temperatures reached by commercially

26
27 ²⁹ R. Paul Jensen, et al., *Hidden Formaldehyde in E-Cigarette Aerosols*, New
28 England Journal of Medicine, 372:392-394 (Jan. 22, 2015).

1 available e-cigarettes operating at high voltage.” The study notes that
 2 “formaldehyde is an International Agency for Research on Cancer group 1
 3 carcinogen.”

4 85. A 2015 study conducted on mice published in the Journal of the Public
 5 Library of Science found that nicotine could also be delivered to humans through
 6 second hand smoke, that inhalation of nicotine through e-cigarettes caused increases
 7 in cotinine levels in the blood similar to levels caused by tobacco smoke, and that
 8 the e-cigarette exposure caused an influx “in macrophages ... similar to the
 9 inflammatory response after exposure to cigarette smoke.”³⁰

10 86. Recently, a 2015-published study conducted by the Rochester Medical
 11 Center and the Rochester Institute of Technology specifically examined the health
 12 effects of BLU E-Cigarettes and one other e-cigarette brand on mice and concluded
 13 that “ENDS may be harmful and injurious by chronic consumption” and the “data
 14 clearly demonstrate[s] the lung toxicity and hazards of exposure to ENDS/e-
 15 cigarettes.”³¹ Specifically, the authors found that:

- 16 • “[i]nhalation of nicotine [from e-cigarettes] is sufficient to
 17 increase cotinine levels in the blood which has been associated
 18 with tobacco smoke induced emphysema in mice,”
- 19 • e-liquids can mediate effects on lung cell morphology and
 20 affect viability,

21
 22 ³⁰ Sussan TE, *et al.* (2015) “Exposure to Electronic Cigarettes Impairs Pulmonary
 23 Anti-Bacterial and Anti-Viral Defenses in a Mouse Model,” PLoS ONE 10(2):
 24 e0116861, available at
 25 <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0116861#pone.0116861.ref018>.

26 ³¹ Lerner A.A, *et al.*, *Vapors Produced by Electronic Cigarettes and E-Juices with*
 27 *Flavorings Induce Toxicity, Oxidative Stress, and Inflammatory Response in Lung*
 28 *Epithelial Cells and in Mouse Lung*, PLoS ONE, Feb. 6, 2015, at 23.

- e-cig aerosols can modulate levels of oxidative stress and inflammation markers in both lung cells and mouse lungs, and
- e-cig aerosols affect in vivo in lung glutathione redox physiology implicating oxidative stress.

87. On May 15, 2015, the American Physiological Society published a study,³² finding that the “results suggest that soluble components of e-Cig, including nicotine causing dose-dependent loss of lung endothelial barrier function, associated with oxidative stress and brisk inflammation.” The study showed that “nicotine and e-cig solutions or vapor condensates cause dose-dependent cell injury manifested by decreased barrier function and decreased cell proliferation *via* specific signaling pathways.” *Id.*

88. Recent independent testing of Defendants’ BLU E-Cigarettes revealed what Defendants had already known: the presence of significant amounts of formaldehyde in the aerosol produced by BLUs. Center for Environmental Health, *A Smoking Gun, Cancer-causing chemicals in e-cigarettes* (2015), http://www.ceh.org/wp-content/uploads/CEH-2015-report_A-Smoking-Gun-Cancer-Causing-Chemicals-in-E-Cigarettes.pdf.

89. Because formaldehyde is present in the aerosol produced by BLUs, users of such products are exposed to formaldehyde by inhaling and/or ingesting the aerosol produced by the products, which is how the BLUs are ordinarily and intended to be used.

90. As of May 27, 2015, researchers were still concluding that “[o]verall, the limited toxicology data on e-cigarettes in the public domain is insufficient to

³² *Endothelial disruptive pro-inflammatory effects of nicotine and e-cigarette vapor exposures*, Am. J. Physiol. Lung Cell Mol. Physiol. (May 15, 2015).

1 allow a thorough toxicological evaluation of this new type of tobacco product
2 [electronic cigarettes].”³³

3 91. While some of the adverse health effects and harmful exposures
4 resulting from the use of BLU E-Cigarettes are known to a handful of researchers,
5 such information is not available or known to ordinary consumers. Defendants, on
6 the other hand, were aware based on studies available to them that were performed
7 as early as 2009-2010 as described above that BLU E-Cigarettes can cause
8 dangerous respiratory issues and emit aerosol that contains harmful carcinogens, but
9 failed to disclose those material facts to consumers because they knew if those facts
10 were disclosed, consumers would either not buy their product or not pay the retail
11 price charged by Defendants. Instead, Defendants made partial misrepresentations
12 about the health effects related to the use of their products, including that
13 Defendants warned consumers about the health effects related to nicotine, but not
14 about the other dangers and harmful effects related to the use of their products, and
15 disclosed the ingredients without disclosing the hidden ingredients caused by the
16 heating of those ingredients or other harmful effects. Therefore, Defendants have
17 fraudulently misled and deceived Plaintiffs and members of the Classes by actively
18 concealing material facts and making fraudulent partial misrepresentations and
19 omissions.

20 **D. Defendants’ Packaging Contains Material Omissions and**
21 **Fraudulent Partial Misrepresentations**

22 92. During the Class Period, the packaging for BLU products, through
23 warnings and labelling fraught with material omissions and fraudulent partial
24 misrepresentations, conveys the impression that the product contains no meaningful
25 health risks other than possibly those that are a direct result of nicotine. The

26 _____
27 ³³ Michael S. Orr, *Electronic cigarettes in the USA: a summary of available*
28 *toxicology data and suggestions for the future*, Tob. Control (May 27, 2015).

1 warning on BLUs' packaging only states that:

2 blu eCigs® electronic cigarettes are not a smoking cessation
3 product and have not been evaluated by the Food and Drug
4 Administration, nor are they intended to treat, prevent or cure
5 any disease or condition. For their protection, please keep out
6 of the reach of children and pets.

7 CALIFORNIA PROPOSITION 65

8 **Warning:** This product contains nicotine, a chemical known to
9 the state of California to cause birth defects or other
10 reproductive harm.

11 93. During the Class Period, packages for BLUs contained the same or
12 substantively similar warnings.

13 94. Defendants utilized very small print on the back of the packaging
14 which made it difficult for many people to read. While Defendants did include
15 some ingredients contained in BLUs, they did not disclose all material risks relating
16 to the hidden ingredients in BLUs caused by heating those ingredients, which
17 creates formaldehyde and other toxins, as described in detail above. Defendants
18 thus denied consumers at the point of sale the opportunity to decide for themselves
19 whether the product was something they were willing to risk inhaling.

20 95. By warning of certain risks relating to nicotine, this packaging implied
21 that those are the only significant health-related risks related to BLU E-Cigarettes,
22 as described above. This is deceptive and misleading, as the package omitted
23 reference to the other carcinogens, including formaldehyde and other toxins and
24 impurities found in BLU E-Cigarettes.

25 96. The package also did not reference the difference in inhalation behavior
26 between vaping and traditional smoking that may cause additional problems for
27 persons who use e-cigarettes, including BLU E-Cigarettes, as described above.

28 97. On their official website, Defendants promise consumers to remain

transparent, ethical, and honest in all of their business, sales, and marketing tactics. However, incomplete and deceptive labels and warnings contradict this notion because Defendants knowingly listed the ingredients and a nicotine warning but left out key facts about their products that can pose significant threats to human health as described hereinabove.

98. As further evidence of Defendants' attempts to actively conceal the risks of their BLU E-Cigarettes, Defendants' website tells consumers to ignore negative studies about E-Cigarettes as nothing more than media hype. BLU's founder, Jason Healy, states³⁴:

A lot of people get misinformed. Readers "share" or "like" a story, inaccuracies spread like wildfire, and correcting the information becomes nearly impossible. Even after people find out the truth, the damage has already been done. Imagine what happens in the minds of the public when news reports, on an almost daily basis, have headlines like the following:

- "9 Terribly Disturbing Things About Electronic Cigarettes"
- "Electronic Cigarette Safety Clouded"
- "Fire Marshal: E-Cigarette Batteries Cause Fires"
- "E-Cigs Carry Harmful Side Effects For Smokers, Nonsmokers"
- "Dangers Of E-Cigarettes, What's Really In The Vapor?"

You get the idea ... sensationalism sells. You capture attention with a "shock and awe" headline. Some of the headlines above are from major media outlets, and others are from local news affiliates and

³⁴ <http://www.blucigs.com/media-e-cigarettes/>

1 blogs. But they are all blatantly anti-electronic cigarette, and the
2 subject matter of the articles is often seriously flawed.

3 I say this because each article contains much speculation passed on as
4 fact, misinformation falsely construed as science and logical fallacies
5 presented as sound argument. The result is gross miseducation of the
6 public, which is relying on these articles to contain accurate
7 information.

8 I am sure many of you are aware of other scientific studies that treat
9 electronic cigarettes in a more even-handed manner. Unfortunately,
10 these studies don't generate the same attention-grabbing headlines as
11 those I mention above. The recurrent major messages and themes are
12 far more anti-electronic cigarette. So again, the general message the
13 public is given about e-cigarettes is, in short, that they're "bad."

14 99. For the reasons set forth *supra*, the material facts actively concealed by
15 Defendants and misleading partial representations contained in BLUs packaging
16 constitute an illegal and fraudulent pattern and practice by Defendants to deceive
17 consumers into purchasing their BLU E-Cigarettes.

18 **V. CLASS DEFINITIONS AND ALLEGATIONS**

19 100. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and
20 (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure. Plaintiffs bring this
21 action on behalf of themselves and all members of the following classes (the
22 "Classes") comprised of:

- 23 a. **All persons, exclusive of Defendants and their employees,**
24 **who purchased in or from California one or more BLU**
25 **E-Cigarettes sold by Defendants during the Class Period**
26 **(the "California Class").**

1 b. All persons, exclusive of Defendants and their employees,
2 who purchased in or from New York one or more BLU
3 E-Cigarettes sold by Defendants during the Class Period
4 (the “New York Class”)

5 c. All persons, exclusive of Defendants and their employees,
6 who purchased in or from Illinois one or more BLU E-
7 Cigarettes sold by Defendants during the Class Period
8 (the “Illinois Class”).

9 101. Plaintiffs reserve the right to modify or amend the definitions of the
10 Classes after they have had an opportunity to conduct discovery.

11 102. The Class Period for the California Class is from April 22, 2011 until
12 the date of notice.

13 103. The Class Period for the New York is from October 2, 2012 until the
14 date of notice.

15 104. The Class Period for the Illinois Class based on fraudulent concealment
16 is from October 2, 2010 until the date of notice, and the Class Period for Illinois
17 Class based on violation of the ICFA is October 2, 2012.

18 105. **Numerosity. Rule 23(a)(1).** The members of the Classes are so
19 numerous that their individual joinder is impracticable. Plaintiffs are informed and
20 believe that the proposed Classes contain at least thousands of purchasers of the
21 BLUs who have been damaged by Defendants’ conduct as alleged herein. The
22 number of members of the proposed Classes is unknown to Plaintiffs but can be
23 discerned from the records maintained by Defendants and retailers.

24 106. **Existence of Common Questions of Law and Fact. Rule 23(a)(2).**
25 This action involves common questions of law and fact, which include, but are not
26 limited to, the following:

27 a. Whether Defendants’ labeling for BLUs discussed herein is true, or is
28 reasonably likely to deceive, given the omissions of material fact and

- 1 partial misrepresentations described above;
- 2 b. Whether Defendants' warnings on the packages of BLU E-Cigarettes
- 3 are misleading or are reasonably likely to deceive, given the omissions
- 4 of material fact and partial misrepresentations described above;
- 5 c. Whether Defendants' conduct described herein constitutes a deceptive
- 6 act or practice in violation of the CLRA (California Class);
- 7 d. Whether Defendants' conduct described herein constitutes an unlawful,
- 8 unfair, and/or fraudulent business practice in violation of the UCL
- 9 (California Class);
- 10 e. Whether Defendants' conduct described herein constitutes unfair,
- 11 deceptive, untrue or misleading advertising in violation of the UCL
- 12 (California Class);
- 13 f. Whether Defendants' conduct described herein constitutes unfair,
- 14 deceptive, untrue or misleading advertising in violation of the FAL
- 15 (California Class);
- 16 g. Whether Defendants' conduct described herein constitutes a violation
- 17 of California's Proposition 65 (California Class);
- 18 h. Whether Defendants' conduct described herein constitutes unfair or
- 19 deceptive acts or practices in violation of the GBL (New York Class);
- 20 i. Whether Defendants' conduct described herein constitutes fraudulent
- 21 concealment in violation of Illinois law (Illinois Class);
- 22 j. Whether Defendants' conduct described herein constitutes a violation
- 23 of the ICFA (Illinois Class);
- 24 k. Whether Plaintiffs and the other members of the Classes are entitled to
- 25 damages; and
- 26 l. Whether Plaintiffs and the Classes are entitled to injunctive relief,
- 27 restitution or other equitable relief and/or other relief as may be proper.
- 28

107. **Typicality. Rule 23(a)(3).** All members of the Classes have been subject to and affected by the same conduct and omissions by Defendants. The claims alleged herein are based on the same violations by Defendants that harmed Plaintiffs and members of the Classes. By purchasing BLUs during the relevant time period, all members of the Classes were subjected to the same wrongful conduct. Plaintiffs' claims are typical of the Classes' claims and do not conflict with the interests of any other members of the Classes. Defendants' unlawful, unfair, deceptive, and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced.

108. **Adequacy. Rule 23(a)(4).** Plaintiffs will fairly and adequately protect the interests of the members of the Classes. Plaintiffs have retained counsel experienced in complex consumer class action litigation, and Plaintiffs intend to prosecute this action vigorously. Plaintiffs have no adverse or antagonistic interests to those of the Classes.

109. **Predominance and Superiority of Class Action. Rule 23(b)(3).** Questions of law or fact common to the Classes predominate over any questions affecting only individual members and a class action is superior to other methods for the fast and efficient adjudication of this controversy, for at least the following reasons:

- a. Absent a class action, members of the Classes as a practical matter will be unable to obtain redress, Defendants' violations of their legal obligations will continue without remedy, additional consumers will be harmed, and Defendants will continue to retain their ill-gotten gains;
- b. It would be a substantial hardship for most individual members of the Classes if they were forced to prosecute individual actions;
- c. When the liability of Defendants has been adjudicated, the Court will be able to determine the claims of all members of the Classes;

- 1 d. A class action will permit an orderly and expeditious administration of
 2 each Class member's claims and foster economies of time, effort, and
 3 expense;
 4 e. A class action regarding the issues in this case does not create any
 5 problems of manageability; and
 6 f. Defendants have acted on grounds generally applicable to the members
 7 of the California, New York and Illinois Classes, making class-wide
 8 monetary relief appropriate.

9 110. Notice to members of the putative Classes may be accomplished
 10 through publication, signs or placards at the point-of-sale, or other forms of
 11 distribution, if necessary, if the Classes are certified or if the Court otherwise
 12 determines class notice is required. Plaintiffs will, if notice is so required, confer
 13 with Defendants and seek to present the Court with a stipulation and proposed order
 14 on the details of a class notice program.

15 VI. CAUSES OF ACTION

16 COUNT I

17 **Injunctive Relief And Damages For Violations of The Consumers Legal 18 Remedies Act**

19 **(Cal. Civil Code §§ 1750, *et seq.*)**

20 **(On Behalf of the California Plaintiffs and the California Class and Against 21 Defendants)**

22 111. The California Plaintiffs repeat and reallege the allegations contained in
 23 the paragraphs above, as if fully set forth herein.

24 112. The relevant period for this cause of action is four years from the date
 25 of filing of this Complaint until judgment is entered.

26 113. This cause of action is brought pursuant to the Consumers Legal
 27 Remedies Act, California Civil Code § 1750, *et seq.* ("CLRA" or the "Act"), which
 28 provides that enumerated listed "unfair methods of competition and unfair or
 deceptive acts or practices undertaken by any person in a transaction intended to

1 result or which results in the sale or lease of goods or services to any consumer are
2 unlawful,” CLRA § 1770, and that “[a]ny consumer who suffers any damage as a
3 result of the use or employment by any person of a method, act, or practice declared
4 to be unlawful by Section 1770 may bring an action against such person to recover
5 or obtain,” various forms of relief, including injunction and damages. Cal. Civ.
6 Code § 1780.

7 114. This cause of action seeks injunctive relief and now also monetary
8 damages. On April 16, 2015, Plaintiff Diek sent Defendants a CLRA notice letter
9 providing the notice required by California Civil Code § 1782(a). Plaintiff Diek
10 sent the letter via certified mail, return receipt requested, to the location in Lake
11 Forest where Plaintiff Diek purchased some of his BLUs, as well as to Defendants’
12 principal place of business in Greensboro, NC, and to the Secretary of State of
13 California, advising Defendants that they are in violation of the CLRA and must
14 correct, replace or otherwise rectify the goods and/or services alleged to be in
15 violation of § 1770. Defendants were further advised that in the event the relief
16 requested has not been provided within 30 days, Plaintiff Diek would amend his
17 Complaint to include a request for monetary damages pursuant to the CLRA.
18 Similarly, Plaintiff Whitney sent a notice of his intent to seek damages under the
19 CLRA on September 2, 2015. Defendants have not corrected, replaced, or
20 otherwise rectified the goods and/or services alleged in either the CLRA letters or
21 this Complaint within the statutorily proscribed 30-day period. Therefore,
22 California Plaintiffs seek both injunctive relief and monetary damages against
23 Defendants pursuant to the CLRA, California Civil Code §§ 1781 and 1782.

24 115. California Plaintiffs were deceived by Defendants’ unlawful practices
25 as described more fully above by actively concealing from consumers that BLU E-
26 Cigarettes emit aerosol with known carcinogens, toxins, and other potentially
27 harmful impurities (such as, among other things, formaldehyde), California
28 Plaintiffs were also deceived by Defendants’ omissions and fraudulent partial

1 representations relating to harm associated with the use of nicotine, and suppression
 2 of the other dangers and harm associated with the use of BLU E-Cigarettes. Also
 3 undisclosed was the lack of additional research which such studies have determined
 4 is required to assess the full potential danger of electronic cigarettes, especially in
 5 long term users, and the serious dangerous respiratory issues associated with using
 6 BLU E-Cigarettes.

7 116. Defendants' actions, omissions and conduct have violated, and
 8 continue to violate the CLRA, because they extend to transactions that are intended
 9 to result, or which have resulted, in the sale of goods to consumers.

10 117. Defendants marketed, sold and distributed BLUs in California during
 11 the relevant period.

12 118. California Plaintiffs and members of the California Class are
 13 "consumers" as that term is defined by the CLRA in Cal. Civ. Code § 1761(d).

14 119. Defendants' BLUs were and are "good[s]" within the meaning of Cal.
 15 Civ. Code §§ 1761(a) & (b).

16 120. Defendants violated the CLRA by engaging in at least the following
 17 practices proscribed by California Civil Code § 1770(a) in transactions with the
 18 California Plaintiffs and the California Class which were intended to result, and did
 19 result, in the sale of BLUs:

20 (5) Representing that [BLUs have] . . . approval, characteristics . . .
 21 uses [or] benefits . . . which [they do] not have . . .

22 ***

23 (7) Representing that [BLUs are] of a particular standard, quality or
 24 grade . . . if [they are] of another.

25 ***

26 (9) Advertising goods . . . with intent not to sell them as advertised.

27 121. As such, Defendants' conduct constitutes unfair methods of
 28 competition and unfair or fraudulent acts or practices because they have and

1 continue to omit material facts which they knew, or should have known, would have
2 a material impact on a consumers' purchasing decision.

3 122. The omitted information would have been material to a reasonable
4 consumer in his or her decision as to whether to purchase BLUs and/or purchase the
5 BLUs at the price at which they were offered.

6 123. Defendants had a duty to disclose this information to California
7 Plaintiffs and the members of the California Class for several reasons. First,
8 Defendants have a statutory obligation under Proposition 65 to provide clear and
9 reasonable warnings regarding the carcinogens contained in their products. Second,
10 Defendants were aware at least as early as 2009, based on published studies
11 referenced *supra*, that their BLU E-Cigarettes emitted aerosol with known
12 carcinogens, toxins, and other impurities, while consumers were not reasonably in a
13 position to be aware of such studies. Despite this knowledge, Defendants actively
14 concealed these material facts from the California Plaintiffs and the California
15 Class. Third, while Defendants made certain specific representation about the risks
16 associated with nicotine, that representation is a misleading half-truth because it
17 implies that is the only risk relating to the product, when, in fact, it is not.
18 Moreover, disclosure of the ingredients without disclosing the hidden ingredients
19 and harmful effects of heating such ingredients is misleading and deceptive.

20 124. Defendants provided the California Plaintiffs and the other California
21 Class members with BLUs that did not match the quality portrayed by their
22 marketing.

23 125. As a result, the California Plaintiffs and members of the California
24 Class have suffered irreparable harm. The California Plaintiffs and the other
25 California Class members' injuries were proximately caused by Defendants'
26 conduct as alleged herein. The California Plaintiffs, individually and on behalf of all
27 other California Class members, seek entry of an order enjoining Defendants from
28 continuing to employ the unlawful methods, acts and practices alleged herein

1 pursuant to California Civil Code section 1780(a)(2), awarding exemplary and
 2 punitive damages against Defendants pursuant to California Civil Code §§
 3 1780(a)(1) and (a)(4), and ordering the payment of damages, costs and attorneys’
 4 fees, and such other relief as deemed appropriate and proper by the Court under
 5 California Civil Code section 1780(a)(2). If Defendants are not restrained from
 6 engaging in these practices in the future, the California Plaintiffs and the California
 7 Class will continue to suffer harm.

8 126. Pursuant to section 1780(d) of the CLRA, the California Plaintiffs
 9 previously filed affidavits showing that this action has been commenced in the
 10 proper forum.

11 **COUNT II**

12 **Injunctive And Equitable Relief For Violations of Unfair Competition Law** 13 **(Cal. Business & Professions Code §§ 17200, *et seq.*)** 14 **(On Behalf of the California Plaintiffs and the California Class and Against Defendants)**

15 127. The California Plaintiffs repeat and reallege the allegations contained in
 16 the paragraphs above, as if fully set forth herein.

17 128. The relevant period for this cause of action is four years from the filing
 18 of this Complaint until judgment is entered.

19 129. The Unfair Competition Law, Cal. Business & Professions Code §
 20 17200, *et seq.* (“UCL”), prohibits any “unlawful,” “unfair,” or fraudulent business
 21 act or practice and any false or misleading advertising.

22 130. In the course of conducting business, Defendants committed unlawful
 23 business practices by, *inter alia*, actively concealing and omitting material facts, as
 24 set forth more fully herein, and violating Cal. Civil Code § 1750, *et seq.* and making
 25 fraudulent partial misrepresentations.

26 131. The California Plaintiffs, individually and on behalf of the California
 27 Class members, reserve the right to allege other violations of law which constitute
 28 other unlawful business acts or practices. Such conduct is ongoing and continues to

1 this date.

2 132. Defendants' actions constitute "unfair" business acts or practices
3 because, as alleged above, *inter alia*, Defendants have engaged and continue to
4 engage in fraudulent partial misrepresentations and actively concealment of material
5 facts regarding their BLUs, and thereby offended an established public policy, and
6 engaged in immoral, unethical, oppressive, and unscrupulous activities that are
7 substantially injurious to consumers. This conduct constitutes violations of the
8 unfair prong of Business & Professions Code § 17200, *et seq.*

9 133. Further, Defendants' failure to warn of the carcinogenic exposures
10 resulting from use of the BLUs is contrary to California law and policy, which
11 obligates Defendants to provide such information to consumers.

12 134. Business & Professions Code § 17200, *et seq.*, also prohibits any
13 "fraudulent business act or practice."

14 135. Defendants' actions, omissions, and partial misrepresentations, as
15 alleged herein, also constitute "fraudulent" business practices in violation of the
16 UCL because, among other things, they are false, misleading, and/or likely to
17 deceive reasonable consumers within the meaning of Business & Professions Code
18 § 17200, *et seq.*

19 136. Defendants' failure to disclose that the BLU E-Cigarettes expose users
20 to formaldehyde violates the UCL's proscription against engaging in fraudulent
21 conduct.

22 137. As more fully described above, Defendants' failure to warn the
23 California Plaintiffs and the California Class members that use of the BLU E-
24 Cigarettes would expose them to formaldehyde a hidden ingredient formed through
25 heating as the product is used, which is known to cause cancer, as well as other
26 toxins, is likely to deceive reasonable consumers. Indeed, the California Plaintiffs
27 and the other members of the California Class were unquestionably deceived, as
28 Defendants' packaging and labeling of the BLU E-Cigarettes misrepresent and omit

1 the true facts about BLU E-Cigarettes, as described hereinabove, including listing
2 ingredients but not including the hidden ingredients such as formaldehyde that are
3 created when the product is heated during use, and falsely representing that the only
4 negative health effects related to the use of BLU E-Cigarettes are certain ones
5 caused by nicotine. This includes the omissions and partial representations
6 described in this complaint regarding serious respiratory issues. Also undisclosed
7 was the lack of additional research which such studies have determined is required
8 to assess the full potential danger of electronic cigarettes, especially in long term
9 users. These acts constitute fraudulent and unfair business practices.

10 138. There were reasonably available alternatives to further Defendants'
11 legitimate business interests, other than the conduct described herein.

12 139. As a result of Defendants' fraudulent partial misrepresentations and
13 omissions as detailed herein, the California Plaintiffs and other members of the
14 California Class have in fact been harmed as described above. If Defendants had
15 disclosed the information discussed above about BLUs and otherwise been truthful
16 about their safety, the California Plaintiffs would not have purchased, or would have
17 paid less for, Defendants' products. Defendants were also able to charge more than
18 what their BLUs would have been worth had they disclosed the truth about them.

19 140. As a result of Defendants' unlawful, unfair, and fraudulent practices,
20 the California Plaintiffs and the other California Class members have suffered injury
21 in fact and lost money. Had the California Plaintiffs and the California Class
22 members known the true nature of the BLU E-Cigarettes, they would not have
23 purchased them or they would have paid less for them.

24 141. As a result of their deception, Defendants have been able to reap unjust
25 revenue and profit in violation of the UCL.

26 142. Unless restrained and enjoined, Defendants will continue to engage in
27 the above-described conduct. Accordingly, injunctive relief is appropriate for the
28 California Plaintiffs and the California Class.

143. As a result of Defendants' conduct in violation of the UCL, the California Plaintiffs and members of the California Class have been injured as alleged herein in amounts to be proven at trial because they purchased BLUs without full disclosure of the material facts discussed above.

144. As a result, the California Plaintiffs, individually, and on behalf of the California Class, and the general public, seek restitution and disgorgement of all money obtained from the California Plaintiffs and the members of the California Class collected by Defendants as a result of unlawful, unfair, and/or fraudulent conduct, and seek injunctive relief, and all other relief this Court deems appropriate, consistent with Business & Professions Code § 17203.

COUNT III

Injunctive Relief And Damages For Violation of False Advertising Law for Deceptive, False And Misleading Advertising (Cal. Bus. & Prof. Code §§ 17500, *et seq.*) (On Behalf of the California Plaintiffs and the California Class and Against Defendants)

145. The California Plaintiffs repeat and reallege the allegations contained in the paragraphs above, as if fully set forth herein.

146. The relevant period for this cause of action is four years from the filing of this Complaint until judgment is entered.

147. Bus. & Prof. Code § 17500 states:

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter, into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any

1 advertising device, or by public outcry or proclamation, or in any
 2 other manner or means whatever, including over the Internet, any
 3 statement, concerning such real or personal property or services,
 4 professional or otherwise, or concerning any circumstance or matter
 5 of fact connected with the proposed performance or disposition
 6 thereof, *which is untrue or misleading, and which is known, or which*
 7 *by the exercise of reasonable care should be known, to be untrue or*
 8 *misleading, or for any such person, firm, or corporation to so make or*
 9 *disseminated or cause to be so made or disseminated any such*
 10 *statement as part of a plan or scheme with the intent not to sell such*
 11 *personal property or services, professional or otherwise, so advertised*
 12 *at the price stated therein, or as so advertised.*

13 148. To establish a violation of § 17500, the California Plaintiffs must show
 14 the following elements: (1) Defendants intended to dispose of personal property; and
 15 (2) Defendants publicly disseminated advertising which: (a) contained a statement
 16 which was untrue or misleading, and (b) which Defendants knew, or in the exercise
 17 of reasonable care should have known, was untrue or misleading, and (3) which
 18 concerned the personal property.

19 149. Defendants disseminated through their product labeling and packaging
 20 that the only negative health affects related to the use of BLU E-Cigarettes is
 21 nicotine. Defendants, however, failed to disclose all of the other material negative
 22 facts related to the use of BLU E-Cigarettes (such as the inhalation of formaldehyde
 23 and other carcinogens and toxins known to be emitted in the aerosol of BLUs).
 24 Defendants also failed to disclose the serious respiratory issues associated with using
 25 BLU E-Cigarettes. Moreover, Defendants listed ingredients on the package but
 26 failure to disclose to users the hidden ingredients, such as formaldehyde, caused by
 27 heating of certain of the listed ingredients. Also undisclosed was the lack of
 28 additional research which such studies have determined is required to assess the full

1 potential danger of electronic cigarettes, especially in long term users. Clearly, the
2 disclosure of these other dangers and adverse health effects would have influenced a
3 consumer's decision to use or buy their product. Defendants' omissions and
4 fraudulent partial misrepresentation(s) reasonably deceived the California Plaintiffs
5 and the California Class to purchase Defendants' BLUs.

6 150. Defendants knew their labelling and packaging of BLU E-Cigarettes
7 were misleading because of studies available to them as described herein above
8 which revealed e-cigarettes emitted aerosol with known carcinogens and toxins and
9 presented other respiratory dangers. Defendants owe the California Plaintiffs and
10 the California Class a duty to exercise reasonable care to prevent the public
11 dissemination of misleading and fraudulent misrepresentations contained on their
12 packaging and labelling. Had Defendants exercised reasonable care, they could have
13 prevented the public disclosure of false and misleading misrepresentations contained
14 in their labelling and package of their BLUs, and therefore could have accurately
15 and fully informed the California Plaintiffs and the California Class of their product,
16 so they could make an informed decision on whether to use or purchase BLUs.
17 Because Defendants publicly disseminated fraudulent and misleading
18 representations in the labelling and packaging of their products, Defendants violated
19 § 17500.

20 151. Bus & Prof. Code § 17535 authorizes courts to enter injunctive relief
21 against deceptive advertising and to award restitution:

22 Any person, corporation, firm, partnership, joint stock company, or
23 any other association, or organization which violates or proposes to
24 violate this chapter may be enjoined by any court of competent
25 jurisdiction. The court may make such orders or judgments, including
26 the appointment of a receiver, as may be necessary to prevent the use
27 or employment by any person, corporation, firm, partnership, joint
28 stock company, or any other association or organization of any

1 practices which violate this chapter, or which may be necessary to
2 restore to any person in interest any money or property, real or
3 personal, which may have been acquired by means of any practice in
4 this chapter declared to be unlawful. Actions for injunction under this
5 section may be prosecuted by the Attorney General or any district
6 attorney, county counsel, city attorney, or city prosecutor in this state
7 in the name of the people of the State of California upon their own
8 complaint or upon the complaint of any board, officer, person,
9 corporation or association or by any person acting for the interests of
10 itself, its members or the general public.

11 152. The California Plaintiffs and the California Class are entitled to
12 injunctive relief and therefore request the Court to issue an order enjoining
13 Defendants from continuing to publicly disseminate their misleading representations
14 in their labelling and packaging. The California Plaintiffs and the California Class
15 are also entitled to a restitutionary award for monies deceptively acquired by
16 Defendants through their misleading partial representations.

17 153. The injuries suffered by the California Plaintiffs and the California
18 Class were directly and proximately caused by the unfair and deceptive acts and
19 practices of Defendants, as more fully described herein.

20 154. The California Plaintiffs and the California Class seek a declaratory
21 judgment and a court order enjoining the above-described wrongful acts and
22 practices of Defendants.

23 155. Additionally, the California Plaintiffs and the California Class make
24 claims for damages, attorneys' fees and costs.

COUNT IV

**Injunctive And Equitable Relief For Violations of Unfair Competition Law
(Cal. Business & Professions Code §§ 17200, *et seq.* based on Violations of
Proposition 65)**

(On Behalf Plaintiff Whitney and the California Class and Against Defendants)

156. The People of the State of California have declared by initiative under Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.” Proposition 65 § 1(b).

157. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals listed by the State of California as known to cause cancer, birth defects, or other reproductive harm without a “clear and reasonable warning” unless the business responsible for the exposure can prove that it fits within a statutory exemption. Health & Safety Code § 25249.6 states, in pertinent part:

No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. . .

158. On January 1, 1988, the State of California officially listed formaldehyde as a chemical known to cause cancer. 27 Cal. Code Regs. (“C.C.R.”) § 27001(b). On January 1, 1989, one year after it was listed as a chemical known to cause cancer, formaldehyde became subject to the clear and reasonable warning requirement regarding carcinogenicity under Proposition 65. *Id.*; Health & Safety Code § 25249.10(b).

159. The BLU E-Cigarettes, when used as directed, produce significant amounts of formaldehyde in the aerosol inhaled by users. Thus, the intended use of the BLU E-Cigarettes results in consumer exposures to formaldehyde.

160. Any person acting in the public interest has standing to enforce violations of Proposition 65, provided that such person has supplied the requisite public enforcers with a valid 60-Day Notice of Violation and such public enforcers

1 are not diligently prosecuting the action within such time. Health & Safety Code §
2 25249.7(d).

3 161. On September 2, 2015, Plaintiff Whitney provided a 60-Day “Notice of
4 Violation of Proposition 65” to the California Attorney General, the District
5 Attorneys of every county in California, the City Attorneys of every California city
6 with a population greater than 750,000 and to Defendants. In compliance with
7 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), the Notice included
8 the following information: (1) the name and address of each violator; (2) the statute
9 violated; (3) the time period during which violations occurred; (4) specific
10 descriptions of the violations, including (a) the routes of exposure to formaldehyde
11 from the BLU E-Cigarettes, and (b) the specific type of BLU E-Cigarettes sold and
12 used in violation of Proposition 65; and (5) the name of the specific Proposition 65-
13 listed chemical that is the subject of the violations described in the Notice.

14 162. Plaintiff Whitney also sent a Certificate of Merit for the Notice to the
15 California Attorney General, the District Attorneys of every county in California,
16 the City Attorneys of every California city with a population greater than 750,000
17 and to the named Defendants. In compliance with Health & Safety Code §
18 25249.7(d) and 11 C.C.R. § 3101, each of the Certificates certified that Plaintiffs’
19 counsel: (1) has consulted with one or more persons with relevant and appropriate
20 experience or expertise who reviewed facts, studies or other data regarding the
21 exposures to formaldehyde alleged in the Notices; and (2) based on the information
22 obtained through such consultations, believes that there is a reasonable and
23 meritorious case for a citizen enforcement action based on the facts alleged in the
24 Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. §
25 3102, the Certificate served on the Attorney General included factual information –
26 provided on a confidential basis – sufficient to establish the basis for the Certificate,
27 including the identity of the person(s) consulted by Plaintiffs’ counsel and the facts,
28 studies, or other data reviewed by such persons.

1 163. None of the public prosecutors with the authority to prosecute
 2 Proposition 65 violations has commenced and/or is diligently prosecuting a cause of
 3 action against Defendants under Health & Safety Code § 25249.5, *et seq.*, based on
 4 the claims asserted in Plaintiff Whitney's Notice.

5 164. Under Proposition 65, an exposure is "knowing" where the party
 6 responsible for such exposure has:

7 knowledge of the fact that a[n] . . . exposure to a
 8 chemical listed pursuant to [Health and Safety Code
 9 §25249.8(a)] is occurring. No knowledge that the . .
 10 . exposure is unlawful is required.

11 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See,*
 12 *e.g.*, Final Statement of Reasons Revised (November 4, 1988) (pursuant to former
 13 22 C.C.R. Division 2, § 12201).

14 165. Throughout the relevant time period, Defendants had either actual
 15 knowledge of the fact that use of the BLU E-Cigarettes exposes users to
 16 formaldehyde, or they were reckless in not knowing. In any event, Defendants have
 17 been informed of the formaldehyde in their BLU E-Cigarettes by the 60-Day Notice
 18 of Violation and accompanying Certificate of Merit served on them by Plaintiff
 19 Whitney.

20 166. Defendants manufacture, distribute, and sell the BLU E-Cigarettes in
 21 California. The Products, when used as directed and intended, expose users to
 22 significant quantities of formaldehyde.

23 167. Proposition 65 requires that businesses such as Defendants that cause
 24 exposures to known carcinogens such as formaldehyde, must first provide a clear
 25 and reasonable warning to those exposed regarding the carcinogenic danger.

26 168. Despite the fact that Defendants expose consumers of the BLU E-
 27 Cigarettes to formaldehyde, Defendants provide no clear and reasonable warnings
 28 regarding such exposures. In fact, Defendants fail to provide any warnings

1 whatsoever about the carcinogenic hazards associated with such exposures.

2 169. Defendants' BLU E-Cigarettes expose Plaintiffs and the members of
3 the Classes to hazardous and toxic carcinogens. The exposure to carcinogenic
4 toxins is information that is material to a reasonable consumer.

5 170. Defendants' failure to tell consumers that they are buying BLU E-
6 Cigarettes that will expose them to the carcinogenic toxin formaldehyde is a
7 material omission.

8 171. Defendants knowingly fail to disclose to consumers the presence of the
9 carcinogenic toxin formaldehyde in the BLU E-Cigarettes.

10 172. Plaintiffs and the members of the Classes do or did not know that use
11 of the BLU E-Cigarettes would expose them to formaldehyde or any chemicals
12 known to cause cancer.

13 173. Plaintiffs and the members of the Classes would not have purchased or
14 paid as much for the BLU E-Cigarettes had they known the BLU E-Cigarettes
15 would expose them to formaldehyde and had included the cancer warnings required
16 by Proposition 65.

17 174. Defendants' material omissions are likely to deceive a reasonable
18 consumer.

19 175. The BLU E-Cigarettes have been sold by Defendants for use in
20 California since at least 2009.

21 176. Defendants continue to manufacture, distribute, and sell the BLU E-
22 Cigarettes to consumers in California while knowingly failing to disclose the
23 presence of the toxin formaldehyde in the BLU E-Cigarettes.

24 177. By committing the acts above, Defendants have violated Proposition 65
25 by knowingly and intentionally exposing individuals in California to a chemical
26 known to cause cancer without first giving clear and reasonable warnings to such
27 individuals regarding the carcinogenicity of formaldehyde.

28 178. Violations of Proposition 65 constitute unlawful acts and practices

1 under the UCL.

2 **COUNT V**
3 **Injunctive Relief And Damages For Violation of New York General Business**
4 **Law**
5 **(N.Y. GBL Law § 349)**
6 **(On Behalf of The New York Plaintiff And The New York Class And Against**
7 **Defendants)**

8 179. The New York Plaintiff repeats and realleges the allegations contained
9 in the paragraphs above, as if fully set forth herein.

10 180. The relevant period for this cause of action is three years from the date
11 of filing of this Complaint until judgment is entered.

12 181. This cause of action is brought pursuant to New York General Business
13 Law § 349 (“GBL § 349”), which prohibits deceptive acts or practices in the
14 conduct of any business, trade or commerce or in the furnishing of any service in
15 New York State.

16 182. The conduct of Defendants alleged herein violates GBL § 349 in that
17 Defendants engaged in the unfair acts and deceptive practices by actively concealing
18 and failing to disclose to consumers, as alleged herein above, that BLU E-Cigarettes
19 emit aerosol with known carcinogens, toxins, and other potentially harmful
20 impurities and pose other respiratory dangers. Defendants stated the ingredients and
21 a nicotine warning on their packages while failing to disclose other dangers and
22 risks about BLU E-Cigarettes as explained more fully in this complaint (including
23 the hidden ingredients such as formaldehyde created when the product is heated
24 during use). Also undisclosed was the lack of additional research which such
25 studies have determined is required to assess the full potential danger of electronic
26 cigarettes, especially in long term users, which offend public policies and are
27 immoral, unethical, unscrupulous and substantially injurious to consumers. Such
28 conduct is inherently and materially deceptive and misleading in a material respect
which was known, or by the exercise of reasonable care, should have been known,
to be untrue, deceptive or misleading by Defendants.

1 183. The conduct of Defendants alleged herein also violates GBL § 349 in
2 that while Defendants made certain specific representations about the risks
3 associated with BLU E-Cigarettes, including on their packages, those
4 representations were misleading half-truths because they implied that those are all of
5 the material or significant risks relating to the use of the product, when, in fact, they
6 are not.

7 184. The materially misleading conduct of Defendants alleged herein was
8 directed at the public at large.

9 185. Defendants' acts and practices described above are likely to mislead a
10 reasonable consumer acting reasonably under the circumstances.

11 186. Defendants have willfully and knowingly violated GBL § 349 because,
12 in order to increase their own profits, Defendants intentionally engaged in omitting
13 material facts regarding their BLU E-Cigarettes as discussed above and by making
14 fraudulent partial misrepresentations.

15 187. As a result of Defendants' deceptive and misleading acts, the New
16 York Plaintiff and the members of the New York Class have been injured because
17 they purchased BLU E-Cigarettes without full disclosure of the material facts
18 discussed above.

19 188. As a result of Defendants' conduct in violation of GBL § 349, the New
20 York Plaintiff and the members of the New York Class have been injured as alleged
21 herein in amounts to be proven at trial because if Defendants had disclosed the
22 information discussed above about BLU E-Cigarettes and otherwise been truthful
23 about their safety, the New York Plaintiff would not have purchased Defendants'
24 products. Defendants were also able to charge more than what their BLU E-
25 Cigarettes would have been worth had they disclosed the truth about them.

26 189. As a result, pursuant to GBL § 349, the New York Plaintiff and the
27 New York Class are entitled to make claims against Defendants for actual or
28 statutory damages to be determined at trial, but not less than 50 dollars per member

1 of the New York Class, such damages to be trebled.

2 190. Additionally, pursuant to GBL § 349, the New York Plaintiff and the
3 New York Class make claims for attorneys' fees, costs, and injunctive relief
4 requiring Defendants to adequately disclose the omitted information described
5 above.

6 **COUNT VI**

7 **Damages For Fraudulent Concealment Under Illinois Law** 8 **(On Behalf of the Illinois Plaintiff And The Illinois Class And Against** 9 **Defendants)**

10 191. The Illinois Plaintiff realleges and incorporates by reference the
11 allegations contained in the paragraphs above, as if fully set forth herein.

12 192. The relevant period for this cause of action is five years from the filing
13 of the original complaint until judgment is entered.

14 193. The Illinois Plaintiff brings this claim individually and on behalf of the
15 Illinois Class.

16 194. As alleged herein, the Illinois Plaintiff has suffered injury in fact and
17 lost money or property as a result of Defendants' conduct because she purchased
18 BLU E-Cigarettes in reliance on Defendants' active concealment and omission of
19 material facts and false and misleading partial misrepresentations, as detailed above.

20 195. Specifically, the Illinois Plaintiff relied on the warning on the packages
21 and the ingredient list as being the full truth, and purchased BLU E-Cigarettes
22 believing that the only material health risks associated with using them were those
23 that were disclosed on the package relating to nicotine. In fact, those
24 representations omitted the fact that studies have found, including studies performed
25 on BLU E-Cigarettes, that they contain detectable levels of known carcinogens,
26 toxic chemicals and other contaminants and impurities that are, or potentially are,
27 disease-causing. Defendants' listing of the ingredients on the package but failure to
28 disclose to users the hidden ingredients of carcinogens and toxins caused by heating
of certain such ingredients was a material omission and false and misleading partial

1 misrepresentation. Defendants also concealed the serious respiratory effects of
2 smoking BLUs and the fact that there are no long term studies done on their safety,
3 as described *supra*.

4 196. Defendants knew of the false and misleading nature of their partial
5 misrepresentations and omissions prior to the Illinois Plaintiff's purchases because
6 Defendants knew that their BLU E-Cigarettes were emitting aerosol with known
7 carcinogens and other toxins as early as 2009, when the FDA publicized a study it
8 had conducted with this conclusion and advised that it was concerned about the
9 safety of E-Cigarettes and the manner in which the products were being marketed.
10 Defendants also knew that their BLU E-Cigarettes could cause dangerous
11 respiratory problems, as described in the studies cited herein, many of which were
12 published prior to the Illinois Plaintiff's purchases from approximately March
13 through August 2013. Defendants also knew that there was a lack of additional
14 research which such studies have determined is required to assess the full potential
15 danger of electronic cigarettes, especially in long term users. Specifically evidencing
16 Defendants' knowledge of the falsity of their omissions and partial
17 misrepresentations is Defendant Lorillard's participation at least by 2013 in
18 CORESTA, an organization formed in part to respond to scientific research relating
19 to tobacco products, including E-Cigarettes, as described above. In addition, as
20 described *supra*, Lorillard admitted in comments to the FDA that it took steps after
21 it acquired BLU in 2012 to study the safety of BLU and its aerosol and that BLU's
22 contain toxins and other unhealthy substances and there are no long-term studies on
23 their safety. Despite this knowledge, Defendants failed to disclose to and actively
24 concealed these material facts from the Illinois Plaintiff and the members of the
25 Illinois Class. By representing on the package that the only known negative health
26 effects related to the use of BLU E-Cigarettes was nicotine, and listing the
27 ingredients but failing to disclose the hidden ingredients of carcinogens and toxins
28 caused by heating such ingredients when smoked as intended, Defendants misled the

1 Illinois Plaintiff and concealed material facts that would have influenced her
2 decision to buy Defendants' BLU E-Cigarettes.

3 197. As further evidence of Defendants' continuing attempts to actively
4 conceal the risks of their BLU E-Cigarettes, Defendants' website deceptively tells
5 consumers to ignore negative studies, which conclude E-Cigarettes are harmful and
6 not proven safe, as nothing more than media hype, as discussed *supra*.

7 198. Defendants intended that the Illinois Plaintiff and the Illinois Class rely
8 on their deceptive acts or practices described *supra*. Defendants' intent is evidenced
9 by their actions, claims, nondisclosures, and misleading statements as alleged in this
10 SCAC, that were false, misleading, and likely to deceive the consuming public, *inter*
11 *alia*, their knowledge that their material misrepresentations or omissions were
12 unlawful in Illinois, and their continuation of such activity in the face of their own
13 testing and other independent studies that confirm that their BLU E-Cigarettes emit
14 harmful carcinogens and have other dangers other than those related to nicotine.
15 Specifically, Defendants intended consumers, including the Illinois Plaintiff and
16 members of the Illinois Class, to rely on Defendants' representations because
17 Defendants knew that had they been truthful and fully informed the consuming
18 public that their products emitted known carcinogens, such as formaldehyde, and
19 other toxins, consumers would not have purchased their products or would have
20 paid less than the retail price. Defendants intentionally omitted these facts for the
21 same reason, putting profits over safety. Defendants had a duty to disclose the
22 omitted facts because their representations were actually false and therefore had a
23 duty to correct consumers' misapprehension regarding the safety of BLU E-
24 Cigarettes that Defendants themselves created and/or because once Defendants
25 spoke they had a duty to disclose the full truth, and not make false and misleading
26 partial representations. In short, Defendants' duty to disclose arises from their
27 deceptive conduct and active suppression of material facts.

28 ///

199. The Illinois Plaintiff has in fact been deceived as a result of her reliance on Defendants' material omissions and false and misleading partial misrepresentations, which are described above. Defendants omitted and misrepresented facts that were material to the Illinois Plaintiff in that those facts were relevant to her health, and therefore, influenced her decision to purchase BLU E-Cigarettes.

200. Defendants' material omissions and false and misleading partial misrepresentations described above have caused harm to the Illinois Plaintiff and other members of the Illinois Class who each purchased Defendants' BLU E-Cigarettes. The Illinois Plaintiff and the other Illinois Class members have suffered injury in fact and lost money as a result of these unlawful, unfair, and fraudulent practices.

COUNT VII

Injunctive Relief And Damages For Violations of The Illinois Consumer Fraud And Deceptive Business Practices Act (815 ILCS 505/1, *et seq.*) (On Behalf of the Illinois Plaintiff And The Illinois Class And Against Defendants)

201. The Illinois Plaintiff realleges and incorporates by reference the allegations contained in the paragraphs above, as if fully set forth herein.

202. The relevant period for this cause of action is three years from the filing of the original complaint until judgment is entered.

203. The Illinois Plaintiff brings this claim individually and on behalf of the Illinois Class.

204. As alleged herein, the Illinois Plaintiff has suffered injury in fact and lost money or property as a result of Defendants' conduct because she purchased BLU E-Cigarettes in reliance on Defendants' active concealment and omissions of material facts and false and misleading partial misrepresentation, detailed above, but did not receive a product containing the characteristics detailed above.

1 205. Specifically, the Illinois Plaintiff relied on the warning on the packages
2 and the ingredient list as being the full truth, and purchased BLU E-Cigarettes
3 believing that the only material health risks associated with using them were those
4 that were disclosed on the package relating to nicotine. In fact, those
5 representations omitted the fact that studies have found, including studies performed
6 on BLU E-Cigarettes, that they contain detectable levels of known carcinogens,
7 toxic chemicals and other contaminants and impurities that are, or potentially are,
8 disease-causing. Defendants' listing of the ingredients on the package but failure to
9 disclose to users the hidden ingredients of carcinogens and toxins caused by heating
10 of certain such ingredients was a material omission and false and misleading partial
11 misrepresentation. Defendants also concealed the serious respiratory effects of
12 smoking BLUs and the fact that there are no long term studies done on their safety,
13 as described *supra*.

14 206. Defendants knew of the false and misleading nature of their omissions
15 and partial misrepresentations prior to the Illinois Plaintiff's purchases because
16 Defendants knew that their BLU E-Cigarettes were emitting aerosol with known
17 carcinogens and other toxins as early as 2009, when the FDA publicized a study it
18 had conducted with this conclusion and advised that it was concerned about the
19 safety of E-Cigarettes and the manner in which the products were being marketed.
20 Defendants also knew that their BLU E-Cigarettes could cause dangerous
21 respiratory problems, as described in the studies cited herein, many of which were
22 published prior to the Illinois Plaintiff's purchases from approximately March
23 through August 2013. Defendants also knew that there was a lack of additional
24 research which such studies have determined is required to assess the full potential
25 danger of electronic cigarettes, especially in long term users. Specifically evidencing
26 Defendants' knowledge of the falsity of omissions and partial misrepresentations is
27 Defendant Lorillard's participation at least by 2013 in CORESTA, an organization
28 formed in part to respond to scientific research relating to tobacco products,

1 including E-Cigarettes as described above. In addition, as described *supra*, Lorillard
2 admitted in comments to the FDA that it took steps after it acquired BLU in 2012 to
3 study the safety of BLU and its aerosol and that BLU's contain toxins and other
4 unhealthy substances and there are no long-term studies on their safety. Despite this
5 knowledge, Defendants failed to disclose to and actively concealed these material
6 facts from the Illinois Plaintiff and the members of the Illinois Class. By
7 representing on the package that the only known negative health effects related to
8 the use of BLU E-Cigarettes was nicotine, and listing the ingredients but failing to
9 disclose the hidden ingredients of carcinogens and toxins caused by heating such
10 ingredients when smoked as intended, Defendants misled the Illinois Plaintiff and
11 concealed material facts that would have influenced her decision to buy Defendants'
12 BLU E-Cigarettes.

13 207. At all times relevant hereto, there was in full force and effect the ICFA,
14 815 ILCS 505/1, *et seq.*

15 208. The ICFA is a regulatory and remedial statute intended to protect
16 consumers, including the Illinois Plaintiff and the Illinois Class, against unfair or
17 deceptive acts or practices. Specifically, Section 2 of the ICFA prohibits deceptive
18 acts or practices, which are committed in the course of trade or commerce and with
19 the intent that others rely upon them. 815 ILCS 505/2.

20 209. Section 2 provides, in full: "Unfair methods of competition and unfair
21 or deceptive acts or practices, including but not limited to the use or employment of
22 any deception, fraud, false pretense, false promise, misrepresentation or the
23 concealment, suppression or omission of any material fact, with intent that others
24 rely upon the concealment, suppression or omission of such material fact, or the use
25 or employment of any practice described in Section 2 of the 'Uniform Deceptive
26 Trade Practices Act,' approved August 5, 1965, in the conduct of any trade or
27 commerce are hereby declared unlawful whether any person has in fact been misled,
28 deceived or damaged thereby. In construing this section, consideration shall be

1 given to the interpretations of the Federal Trade Commission and the federal courts
2 relating to Section 5(a) of the Federal Trade Commission Act.” 815 ILCS 505/2.

3 210. Section 2 of the Uniform Deceptive Trade Practices Act states in
4 relevant part that: “A person engages in a deceptive trade practice when, in the
5 course of his or her business, vocation, or occupation, the person ... represents that
6 goods or services have . . . characteristics, . . . uses, [or] benefits . . . that they do not
7 have” 815 ILCS 510/2(a)(5).

8 211. The Illinois Plaintiff and the Illinois Class reserve the right to allege
9 other violations of law, which constitute other unlawful business acts or practices.

10 212. Such conduct is ongoing and continues to this date. As evidence of
11 Defendants’ continuing attempts to actively conceal the risks of their BLU E-
12 Cigarettes, Defendants’ website deceptively tells consumers to ignore negative
13 studies, which conclude E-Cigarettes are harmful and not proven safe, as nothing
14 more than media hype, as described *supra*.

15 213. The above-described unfair or deceptive acts or practices occurred in
16 the course of conduct involving trade or commerce, namely, the sale of goods to the
17 Illinois Plaintiff and the Illinois Class.

18 214. Defendants’ practice of knowingly and unlawfully engaging in the
19 activity described above also constitutes “unfair” business acts or practices because,
20 *inter alia*, Defendants engaged in false advertising, which misrepresents and omits
21 material facts regarding BLU E-Cigarettes. Defendants’ business acts or practices
22 therefore offend an established public policy, and Defendants engage in immoral,
23 unethical, oppressive, and unscrupulous activities that are substantially injurious to
24 consumers, as alleged in detail *supra*, and therefore, Defendants’ actions are unfair
25 or deceptive acts or practices prohibited by Chapter 2 of the ICFA. 815 ILCS 505/2.

26 215. Defendants intended that the Illinois Plaintiff and the Illinois Class rely
27 on their deceptive acts or practices described *supra*. Defendants’ intent is evidenced
28 by their actions, claims, nondisclosures, and misleading statements as alleged in this

1 SCAC, that were false, misleading, and likely to deceive the consuming public, *inter*
2 *alia*, their knowledge that their material misrepresentations or omissions were
3 unlawful in Illinois and their continuation of such activity in the face their own
4 testing and other independent studies that confirm that their BLU E-Cigarettes emit
5 harmful carcinogens and have other dangers other than those related to nicotine.
6 Specifically, Defendants intended consumers, including the Illinois Plaintiff and
7 members of the Illinois Class, to rely on Defendants' representations because
8 Defendants knew that had they been truthful and fully informed the consuming
9 public that their products emitted known carcinogens, such as formaldehyde, and
10 other toxins, consumers would not have purchased their products or would have
11 paid less than the retail price. Defendants intentionally omitted these facts for the
12 same reason, putting profits over safety. Defendants had a duty to disclose the
13 omitted facts because their representations were actually false and therefore had a
14 duty to correct consumers' misapprehension regarding the safety of BLU E-
15 Cigarettes that Defendants themselves created and/or because once Defendants
16 spoke they had a duty to disclose the full truth, and not make false and misleading
17 partial representations. In short, Defendants' duty to disclose arises from their
18 deceptive conduct and active suppression of material facts.

19 216. The Illinois Plaintiff has in fact been deceived as a result of her reliance
20 on Defendants' material omissions and false and misleading partial representations,
21 which are described above. Defendants omitted and misrepresented facts that were
22 material to the Illinois Plaintiff in that those facts were relevant to her health, and
23 therefore, influenced her decision to purchase BLU E-Cigarettes.

24 217. Defendants' material omissions and false and misleading partial
25 misrepresentations described above have caused harm to the Illinois Plaintiff and
26 other members of the Illinois Class who each purchased Defendants' BLU E-
27 Cigarettes. The Illinois Plaintiff and the other Illinois Class members have suffered
28 injury in fact and lost money as a result of these unlawful, unfair, and fraudulent

practices.

VII. PRAYER FOR RELIEF

Wherefore, Plaintiffs, on behalf of themselves and the Classes, pray for a judgment:

- a. Certifying the California, New York, and Illinois Classes as requested herein, appointing Plaintiffs as class representatives for the respective Classes they seek to represent, and appointing Plaintiffs' attorneys as counsel for the Classes;
- b. Requiring Defendants to disgorge or return all monies, revenues and profits obtained by means of any wrongful act or practice to Plaintiffs and the members of the Classes under Cal. Bus. & Prof. Code § 17200, *et seq.*, and each other cause of action where such relief is permitted;
- c. Enjoining Defendants from continuing the unlawful practices as set forth herein, including marketing or selling BLUs without disclosing the potential health and safety risks relating thereto, and directing Defendants to engage in corrective action, or providing other injunctive or equitable relief;
- d. Awarding exemplary and punitive damages pursuant to Cal. Civ. Code § 1780 to prevent and deter Defendants from future unlawful conduct;
- e. Awarding damages or restitution as appropriate to Plaintiffs and each member of the California, New York, and Illinois Classes pursuant to the CLRA, UCL, FAL, GBL, ICFA and Illinois fraudulent concealment claim;
- f. Awarding all equitable remedies available pursuant to Cal. Civ. Code § 1780 and other applicable law;
- g. Awarding attorneys' fees and costs;
- h. Awarding pre-judgment and post-judgment interest at the legal rate; and

i. Providing such further relief as may be just and proper.

Dated: May 23, 2016

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VIII. DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: May 23, 2016

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